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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73-286

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
ADVENT CORPORATION, CAMBRIDGE, MASS.
For Waiver of the Comparable Tuning
Rules (47 CFR 15.68 and 15.69(a)(3))

MARCH 13, 1973.

DAVID RICHARDSON, ESQ.,
Peabody and Arnold,
53 State Street,
Boston, Mass. 02109

DEAR MR. RICHARDSON: This concerns a petition for waiver of the comparable tuning rules (47 CFR 15.68 and 15.69(a)(3)) filed on behalf of Advent Corporation of 195 Albany Street, Cambridge, Massachusetts on February 6, 1973. A grant of the request would permit combination of a UHF continuous tuner with a detented VHF tuner on a maximum of 1,000 units of one specially designed television receiver model. VHF and UHF tuning would be AFC-aided. UHF readout would be at five channel intervals. The waiver would not apply to receivers manufactured after February 15, 1974, even if fewer than 1,000 units had been produced by that date..

The television receiver in question is described by Advent as projecting a color or monochrome signal from a broadcast, videotape or cable source onto a curved 4 x 5½ foot screen located eight feet from the receiver. The picture is comparable in brightness to that shown in commercial movie theatres and is intended to be viewed in a darkened room. It is intended that the system be set up in a permanent position, as proper focus is dependent on precise positioning of the projector and screen. Advent expects to sell the system direct to retail customers at a price of approximately $2,500.00 per system. It has planned to produce 1,000 units during the first year of production, beginning in February 1973, and during this period hopes to develop a broad market for the system. Advent anticipates that the initial primary market for the system would be in industrial training and education applications where it would most likely be used with videotape or closed-circuit programming and the "lack of comparable tuning would be of no consequence." An initial secondary market is expected to be "fraternal organizations, service clubs, taverns and other facilities where prearranged, serious, communal viewing would be the normal use." Where people gather together for scheduled viewing of a particular program such as a major sporting event, the company believes that the lack of comparable tuning would not discourage the viewing of UHF programs. It is not expected that many of the systems

will be sold to individuals or, in any event, that they would be used for casual home viewing, since they are intended for group viewing in a specially prepared environment.

This is the first television receiver Advent has developed and it is the only receiver it has decided to produce. A waiver of the percentage of models requirement is therefore not required. Since the receiver was not produced prior to January 1, 1972, however, waiver of the "new model" requirement is required.

Advent originally planned to commence production of its receiver in October 1972. Components, including 300 UHF continuous tuners, were ordered in anticipation of such production. A November 15, 1972 prospectus filed by the company in connection with an initial stock offering stated that Advent expected to introduce the receiver late in 1972. For reasons not associated with the tuner, however, production was delayed until February 1973. Advent has only recently learned that television receiver models first manufactured after January 1, 1972 must be equipped for comparable UHF tuning. It is proceeding to redesign its receiver to accommodate a comparable UHF tuner. However, substitute tuners are available only on a 20–26 week delivery schedule on the one hand or on a minimum order of 20,000 units basis on the other. Moreover, redesign of the receiver will require 10–12 months.

Advent believes that it would suffer a "major public embarrassment and damage to its reputation" if it is forced to again delay introduction of its system or to offer it without broadcast receiving capability, particularly in view of the fact that individuals have purchased the company's stock on the basis of representations as to the late 1972 introduction date set out in its prospectus. It is also concerned that marketing of an incomplete system would seriously impair its efforts to develop a broad market for its system.

On the facts presented, we think that a waiver of the comparable tuning rules is warranted. Advent is new to the television receiver business and proceeded in ignorance of the "new model" requirement. Ignorance alone does not, of course, excuse compliance. Since becoming aware of the requirement, Advent has nevertheless proceeded diligently to develop a source for a comparable tuner and to commence redesign of its receiver to accommodate it, and we are satisfied by this effort that Advent has proceeded in good faith. The small number of units, and the cost and special design features which suggest business and institutional usage and non-broadcast applications, are also factors. In these circumstances, our rules should not be so implemented as to discourage introduction of an innovative product. Nor should they be rigidly applied to a small firm seeking entry into a new market.

Accordingly, §§ 15.68 and 15.69(a)(3) are waived to permit Advent Corporation to combine a continuous UHF tuner (with channel readout at 5 channel intervals) with a detented VHF tuner on 1,000 units of one specially designed television receiver model through February 15, 1974.

Commissioner H. Rex Lee concurring in result.

By Direction of the Commission.
Ben F. Waple, *Secretary.*

F.C.C. 73-258

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by AMERICAN SECURITY COUNCIL To Withhold Action on Assignment of Licenses of Stations WSAF AM and FM, Sarasota, Fla.	BAL-7599 and BALH-1679

MARCH 7, 1973.

MR. CHARLES STEWART,
American Security Council,
1101 17th Street N.W.,
Washington, D.C. 20036

DEAR MR. STEWART: Reference is made to a letter from your counsel dated January 23, 1973, asking the Commission to temporarily withhold action on the pending applications (BAL-7599 and BALH-1679) to assign the licenses of Stations WSAF AM & FM, Sarasota, Florida from H. Edward Dillon, Receiver for Stewart Broadcasting Company.

In support of this request, your counsel alleged in essence, that there are several cases currently pending before the Florida courts which seek to determine whether the appointment of the receiver Mr. Dillon was procured through what amounts to fraud on the Florida court. Subsequent to the filing of this letter, your counsel as well as the applicants have made additional submissions and you attempted to obtain a restraining order in the Florida Court to prevent the applicant herein from consummating the assignment proposed in the subject applications.

Review of the submissions by you and the applicants reveals the following:

1. Prior to the submission of the above-referenced letter, the question of fraud in the appointment of the receiver, Mr. Dillon, has been litigated, in interlocutory actions, four times through the appellate level of the Florida courts. In each instance the courts' decisions were adverse to your claims.
2. On February 5, 1973 your request to stay or restrain the closing of the transaction was also denied.

In short, the Florida courts have already ruled against you four times with regard to your allegations that the appointment of Mr. Dillon was through fraud. Further, the Florida Court itself has refused to restrain the parties from consummating this transaction. In addition, on the same day the court authorized the parties to consummate this transaction immediately following approval by the Commission. In light of the above, we do not believe the public interest would be served by further delaying consideration of the subject applications.

In view of the foregoing, and since the Commission found the applicant herein in all other respects qualified, it has this day made the required public interest determination and granted the application of the receiver H. Edward Dillon to assign the licenses of Station WSAF AM & FM to Sarasota Radio Company.

Commissioner Johnson concurring in the results. Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-330

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST APPLICANTS Part 1, Sections IV-A and IV-B, of Broadcast Application Forms, and Primer Thereon	Docket No. 19715

NOTICE OF INQUIRY

(Adopted March 22, 1973; Released March 23, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT; COMMISSIONER H. REX LEE CONCURRING AND ISSUING A STATEMENT; COMMISSIONER HOOKS ABSENT.

1. The Commission has under consideration its requirements and policies with respect to ascertaining and meeting community problems by broadcast applicants.[1]

2. Our Task Force study concerning re-regulation of broadcasting, under the supervision of Commissioner Wiley, indicates that the ascertainment process should be examined for its overall effectiveness in the public interest.

3. Pursuant to the Commission's Program Policy Statement of 1960, "The broadcaster is obligated to make a positive, diligent and continuing effort, in good faith, to determine the tastes, needs and desires of the public in his community and to provide programming to meet those needs and interests." (FCC 60-970; 25 F.R. 7291)

4. The Commission's present standards for the ascertainment process are set forth in a question-and-answer type "Primer on Ascertainment of Community Problems by Broadcast Applicants", adopted February 18, 1971 (Report and Order, Docket No. 18774, 27 F.C.C. 2d 650). The Commission stated that, ". . . the amended Primer, in our view, will aid broadcasters in being more responsive to the problems of their communities, add more certainty to their efforts in meeting Commission standards, make available to other interested parties standards by which they can judge applications for stations licensed to their community, and aid our staff in applying standards uniformly." The Commission indicated, however, that with respect to renewal applicants the Primer was to serve "as an interim measure until other standards are adopted." (*Id.*, at 655.)

[1] The word "problems" is used as a short form of the phrase "problems, needs and interests." (A. 3. Primer on Ascertainment)

5. Our experience indicates that the principle of ascertaining and meeting community problems is one important requisite for service in the public interest. We are concerned here, as part of our continuing study on re-regulation of broadcasting, with whether present ascertainment requirements serve the public interest in the most effective way possible and, if not, what improvements could be made to accomplish that objective. Over 600 comments have been filed in our re-regulation study. Many contend that various specific requirements of the ascertainment process are unnecessary, impractical, unduly burdensome and, thus, should be modified or deleted.

6. Comments in our re-regulation study also assert that radio is a different medium from television and should be treated differently in the matter of ascertainment. Accordingly, Part I of the Inquiry is designed to explore these alleged differences relative to the role of each of the media in discharging its statutory responsibility for serving the public interest, convenience, and necessity. An inherent consideration, in this regard, is any possible conflict with mandates of the Communications Act of 1934, as amended. Additionally, the comments we have received suggest that certain variables (e.g., market size, numbers of stations, number of employees, specialized formats, etc.) also should be considered in determining ascertainment procedures.

7. While the issues involved in Part I are very broad and relate to many aspects of our regulatory policy (some of which may be the subject of subsequent Commission action), the focus of this Inquiry is particularly related to ascertaining and meeting community problems. Thus, Part II deals specifically with ascertainment processes for both radio and television in light of any difference between the two media and operational variables involved (as elicited in Part I).

8. This Notice of Inquiry elicits comments (on issues set forth below) applicable to both radio and television. Due consideration will be given, of course, to any comments received. However, in all probability, our initial concern will be with radio, since it is the primary focus of our re-regulation study. Additionally, radio stations (of which there are approximately ten times as many as television stations) have wider variances as to size of market, operating power, hours of operation, type of service (AM, FM) and programming format to serve the public. These variances and the resultant diverse nature of radio make its ascertainment considerations of more immediate concern.

9. Comments are invited on the following questions:

PART I

(a) What is the role (or function) of *radio* in discharging its statutory responsibility for serving the public interest, convenience and necessity; and is that role affected by size of market ("small market",[2] Top 50, Top 100, etc.), number of stations in a market, number of station employees, specialized programming or other variables?

(b) What is the role (or function) of *television* in discharging its statutory responsibility for serving the public interest, convenience and necessity; and is that role affected by any variables such as those indicated in (a) above?

[2] We specifically invite comments on how "small market" should be defined both as to radio and television.

PART II

(a) Do the roles (or functions) of radio and television in discharging their responsibility for serving the public interest, convenience and necessity differ to the extent that requirements for ascertaining and meeting community problems should be different for each service? If so, would such different requirements be inconsistent with any part of the Communications Act of 1934, as amended? Similarly, should any of the variables set forth in Part I dictate any different requirements and, if so, would such different requirements be inconsistent with the Act?

(b) In answering the general questions in (a) of this Part, and in considering the entire subject of ascertaining and meeting community problems, the following specific questions should be addressed:

(1) Should an ascertainment of community problems be made six months before filing an application, as now required, at some different time, or on a continuing basis? What should be considered a "continuing" basis? How should it be accomplished? How should it be documented?

(2) Are consultations with community leaders and members of the public, in the manner provided by the Primer, helpful to the station and to the public which the station is licensed to serve?

(3) Should consultations with community leaders be conducted by principals and management-level employees only, or by other employees as well? If so, which ones? By non-employees?

(4) Should a professional research firm be permitted to make the ascertainment of community leaders for a station? For all stations in the community collectively? Would use of a research firm be consistent with the Commission's traditional view that this is "a duty personal to the licensee and may not be avoided by delegation of the responsibility to others". (Commission's Program Policy Statement of 1960, *supra.*)

(5) Is it advisable to permit:

(i) Group consultations (in which all licensees in the community meet with community leaders, community groups and members of the public)? If so, under what circumstances, and why?[3]

(ii) Ascertainment of community problems by means of broadcast programming (including announcements) in which community leaders, members of the public, etc. participate (such as panel and interview programs)?

(iii) Ascertainment of community problems by Town Hall types of meetings? Should this procedure be used to consult with all community leaders? The public? Or both? Would such meetings be representative of the public the station is licensed to serve?

(6) Should consultation with community leaders by telephone continue to be permitted? Why?

(7) In the broadcast of matter designed to meet community needs, should credit be given for spot announcements as well as for programs? May spot announcements be used exclusively?

(8) Should a station using a specialized programming format be permitted to ascertain and meet only the problems of its specialized audience? Is it possible to define accurately that audience out of the total general public? If so, how?

(9) Should different requirements for ascertaining and meeting community problems be applied according to different types of applications, i.e., for new stations, major changes in facilities, assignments and transfers and renewals? Why?

(10) Should requirements for ascertaining and meeting community problems be incorporated in the Commission's rules or left, as now, in policy statements and forms? Why?

[3] It is the Commission's current policy to permit joint consultations under the following conditions: Each individual community leader must be given an opportunity to freely present his opinion of community problems; each broadcaster present must have an opportunity to question each leader; and the joint meetings should include community leaders who are the same or equal plane of interest and responsibility. See June 30, 1971, letter to Southern California Broadcasters Association (FCC 71-699); and August 4, 1971, letter to Metro Portland Broadcast Committee (FCC 71-825).

10. Comments in both Parts of this proceeding are not limited to the foregoing questions, but may be addressed to any facet of the processes for ascertaining and meeting community needs. It is hoped that comments, either formal or informal, will be submitted by interested parties from all segments of the public and broadcasting industry.

11. The questions above are designed to elicit information which would be helpful in this proceeding. The Commission takes no position on these matters at this time.

12. This action is taken pursuant to Section 403 of the Communications Act of 1934, as amended. Interested parties responding to this Notice of Inquiry may file comments on or before June 1, 1973. Reply comments may be filed on or before June 22, 1973. An original and eleven copies of each formal response must be filed in accordance with the provisions of Sections 1.49 and 1.51 of the Commission's rules. However, in an effort to obtain the widest possible response in this proceeding from licensees and members of the public, informal comments (without extra copies) will be accepted. Copies of all pleadings filed in this matter will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Communications Act makes clear that broadcasters have an obligation to serve "the public interest."

The Act, and its legislative history, make clear that "the public interest" includes programming.

The whole premise underlying the allocation of 95% of the nation's most valuable frequency space to 8,000 radio and television stations (rather than defense, police, and business uses) is that these stations are providing *local* programming designed to serve *local* needs.

There are a number of ways the Commission can insure compliance with the Act. Some involve Commission action—such as establishing minimum performance criteria necessary to renewal. Others substitute the involvement of local citizens for regulation from Washington. I prefer the second, but can accept either approach. What I cannot abide are the broadcasters' arguments that they should be responsible to neither the FCC nor their local communities.

While examining the "role" of radio and television, and the possibility of modifying (presumably reducing) the local ascertainment process, the inquiry does not even contemplate the numerous alternatives to ascertainment should it be curtailed.

Sensible substitution of one public interest process for another I am prepared to consider. If there are ways to relieve broadcasters of unproductive burdens we should do so. Whatever may be the protests to the contrary, however, I fear that this inquiry—once concluded—may well turn out to be but one more example of the erosion of such

feeble efforts as still remain to provide some public interest criteria for broadcasting with nothing to substitute in its place.

It will be issued in time for the cheers it will undoubtedly produce at next week's annual convention of the National Association of Broadcasters. But that is scarcely justification for the haste purpose or content of this document.

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I concur in the adoption of this inquiry into the Commission's current ascertainment requirements for commercial broadcast applicants. As a general proposition, I favor an administrative agency's review of the effectiveness and impact of its past regulation. Two years have now passed since the *Primer* was issued. In that time it has become evident that some modifications and changes may be needed to help improve and possibly simplify the ascertainment process for both the licensees and the public. Hopefully, this inquiry will accomplish these goals.

In the *Primer* we stressed that ascertainment standards would be applied to renewal applicants only on an interim basis until the Commission could review comments filed in Docket Nos. 19153 and 19154, wherein we are examining our renewal processes in the commercial broadcast field. Action on these dockets is long overdue. Comments have been filed, and an oral argument held with respect to the latter docket. The uncertainty which these proposed rules have created in the broadcast industry and public should have been disposed of one way or another before we initiated this broad inquiry.

There are several pending petitions for rulemaking which seek to impose formal ascertainment requirements on noncommercial educational broadcasters and to modify their renewal process. These subject areas could have been included in the commercial ascertainment inquiry. However, this would not have been administratively wise. It should be noted the *Primer* was specifically intended to provide guidelines for commercial broadcast applicants only and the Commission previously indicated that noncommercial educational broadcasters should be treated differently, given their unique character and the very specialized nature of their programming. See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 651 (1971). As a result, it is more appropriate to address the substance of the pending rulemaking petitions apart from the ascertainment inquiry concerning commercial broadcast applicants although the latter could have a substantial impact on the Commission's consideration of the former.

F.C.C. 73-341

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH CO. Revision of American Telephone and Telegraph Co. Tariff F.C.C. No. 133, Teletypewriter Exchange Service (TWX)	Docket No. 18718

ORDER

(Adopted March 29, 1973; Released April 3, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. This proceeding was commenced on October 29, 1969 (20 FCC 2d 1111) to investigate the lawfulness of rate increases filed by AT&T in its TWX tariffs and to determine whether the Commission should prescribe for the future rates different from those proposed by AT&T. On April 1, 1971, AT&T cancelled its TWX tariffs following the acquisition of TWX service from AT&T by the Western Union Telegraph Company (Western Union). Since March 31, 1971 AT&T has provided no TWX service and has published no TWX rates.

2. On February 21, 1973 in Docket No. 19696, we instituted an investigation into the lawfulness of the presently effective charges of Western Union for TWX service. Thus, the issues concerning the lawfulness of AT&T's TWX rates have been rendered moot except for the question of the past lawfulness of the AT&T rates from February 1, 1970 to March 31, 1971 when the increased rates went into effect following the 3-month suspension period. However, we have been informed by the parties to this proceeding that they do not desire to pursue the question of the lawfulness of AT&T's TWX tariffs for such past period. In view of the foregoing, we conclude that we should, on our own motion, terminate the proceedings in this docket.

3. Accordingly in view of the foregoing, IT IS ORDERED, That this proceeding is HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-362

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH CO., ITT WORLD COMMUNICATIONS INC., RCA GLOBAL COMMUNICATIONS, INC., WESTERN UNION INTERNATIONAL, INC. Applications for Authority to Participate in the Construction and Operation of the TAT-6 SG Submarine Cable System Between the United States and France.	Files Nos. P-C-8276, T-C-2452, T-C-2448, T-C-2444.
TROPICAL RADIO TELEGRAPH CO. Application for Authority to Acquire by Indefeasible Right of User and Operate Circuits in the TAT-6 SG Submarine Cable System Between the United States and France.	File No. T-C-2469
AMERICAN TELEPHONE AND TELEGRAPH CO. Application for Authority to Acquire and Operate Circuits in the CANTAT-II Submarine Cable System Between Canada and the United States and to Make Available Circuits in the TAT-6 SG Submarine Cable System Between the United States and France.	File No. P-C-8277
ITT WORLD COMMUNICATIONS INC., RCA GLOBAL COMMUNICATIONS, INC., WESTERN UNION INTERNATIONAL, INC. Applications for Authority to Acquire and Operate Circuits in the CANTAT-II Submarine Cable System Between Canada and the United Kingdom.	Files Nos. T-C-2451, T-C-2453, T-C-2443.

MEMORANDUM OPINION AND ORDER

(Adopted April 4, 1973; Released April 9, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has under consideration herein:

a. A petition filed on August 11, 1972, by RCA Global Communications, Inc. (RCA Globcom), requesting partial reconsideration of the Commission's Memorandum Opinion, Order and Authorization released July 12, 1972, *American Telephone and Telegraph Company et al.*, 35 F.C.C. 2d 801 (*Decision*) which authorized RCA Globcom and other United States overseas common carriers to

participate in the construction and operation of the TAT–6 submarine cable system and to acquire on an indefeasible right-of-user (IRU) basis, and operate, interests in the CANTAT–II submarine cable system; [1]

b. oppositions filed by ITT World Communications Inc. (ITT Worldcom) and Western Union International, Inc. (WUI) on August 21, 1972, and September 5, 1972, respectively; and

c. RCA Globcom's reply filed on September 12, 1972.

BACKGROUND

2. In its July 7, 1972 *Decision*, the Commission, *inter alia*, authorized RCA Globcom, ITT Worldcom, WUI, and the American Telephone and Telegraph Company to acquire and operate circuits in the TAT–6 and CANTAT–II submarine cable systems. The ITT Worldcom, RCA Globcom and WUI applications which the Commission then had under consideration requested the following numbers of circuits:

	No. of TAT–6 Circuits		No. of CANTAT–II Circuits	
	Half	Whole	Half	Whole
Carrier:				
RCA Globcom	244	68	60	5
ITT Worldcom	226	60	62	0
WUI	223	70	56	4

The Commission's *Decision* authorized the record carriers to acquire the following numbers of circuits:

	Number of TAT–6 circuits		Number of CANTAT–II circuits
	Half	Whole	Half
RCA Globcom	89	26	20
ITT Worldcom	89	26	20
WUI	89	26	20

The Commission also placed 912 half and 247 whole TAT–6 circuits in a pool for subsequent allocation among all United States overseas carriers. By its present Petition, RCA Globcom seeks an increase in the number of TAT–6 circuits it is initially authorized to acquire.[2]

THE PLEADINGS

3. RCA Globcom contends that by authorizing each of the three major United States record carriers to acquire the same number of

[1] ITT Worldcom and WUI also filed comments pertaining to the Decision, saying that, while they wished to have such comments considered as formal pleadings, they were not petitioning for reconsideration of the Decision. Since no action is requested of the Commission by these filings, we need not discuss herein the points raised therein. Therefore, we shall associate these comments with ITT Worldcom's and WUI's TAT–6 and CANTAT–II application files without consideration of the merits of any points raised therein.

[2] While RCA Globcom also expresses its disagreement with the number of CANTAT–II circuits it was authorized to acquire, it requests only that its allocation of TAT–6 circuits be increased (Petition, p. 20). Therefore, we need not address ourselves to the points raised by RCA Globcom pertaining to CANTAT–II.

TAT–6 circuits, the Commission made an arbitrary and artificial allocation of facilities among these carriers which disregards past Commission precedent, is inconsistent with the Commission's own traffic forecast set forth in Appendix B of the Decision and disregards RCA Globcom's clearly established greater need for circuits. In support of these arguments, RCA Globcom asserts that in its decisions authorizing the United States overseas carriers to participate in the construction and operation of the TAT–4 and TAT–5 cable systems, the Commission did not follow this approach but authorized them to acquire circuits in a manner which gave recognition to each carrier's stated requirements. Thus, RCA states, the Commission authorized these carriers to each acquire 70% of their stated requirements in the TAT–4 system. It goes on to say that, in its TAT–5 decision, the Commission specifically recognized RCA Globcom's then current use of a larger number of circuits to points beyond Spain, Portugal, and Italy and authorized it to acquire 38% of the TAT–5 circuits initially allocated to all record carriers to these points while authorizing ITT Worldcom and WUI to each acquire 31% of such circuits. RCA Globcom further indicates that it was allocated a greater number of circuits than ITT Worldcom and WUI at the Eastbourne negotiations pertaining to TAT–6 (see *Decision*, para. 8). RCA Globcom asserts that nothing in the past history and practice of the record carriers or in these carriers' negotiations with their foreign correspondents lends support to the Commission's allocation of an equal number of TAT–6 circuits to the three major record carriers.

4. RCA Globcom contends that the Commission's allocation of TAT–6 circuits is also inconsistent with its own findings. It is asserted that, as set forth in Paragraphs 43–46 of the Decision (35 F.C.C. 2d at Pages 819–820) and Appendix B (35 F.C.C. 2d at Page 830) of its Decision, the Commission, applying its own methodology, concluded that RCA Globcom would require 354 circuits (by all media) by 1980 as compared to requirements of 270 and 222 circuits respectively for ITT Worldcom and WUI. RCA Globcom states that after reaching the aforementioned determination that RCA Globcom would require approximately 30% more circuits than ITT Worldcom and 60% more circuits than WUI, the Commission, without explanation, shifted from a carrier base to an industry base and allocated equally among these three carriers the total of 345 TAT–6 circuits it determined would be needed by them as a group. RCA Globcom submits that this allocation is entirely arbitrary and capricious, and that had the Commission followed its own statistical methodology, it would have allocated more circuits to RCA Globcom than to either of its two major competitors. It also says that the allocation reached at Eastbourne also supports this view.

5. RCA Globcom further contends that the Commission has underestimated its need for circuits by erroneously assuming on the basis of an unrepresentative base period, a declining rate of growth in demand for record carrier services in the 1974–76 time period during which the TAT–6 and CANTAT–II cable system will become available for service. It is asserted that the Commission's projection of a declining rate of growth during this time period is inconsistent with the state-

ments made in Paragraph 60 of the Decision (35 F.C.C. 2d at 834) where, in addressing itself to the question of rate adjustments, the Commission indicated an awareness of the rapid increase in demand for services offered by record carriers. RCA Globcom also asserts that if the Commission contemplates rate reductions as indicated in the Decision, it must also take into account the stimulation in demand for services which will be produced by these rate reductions, as well as the demand which is expected for data transmission. RCA also alleges that the Commission failed to consider the fact that RCA Globcom provides 50% of the circuits used to provide leased alternate voice-record service and 47% of leased teleprinter channels to TAT–6 points. It argues that the bulk of its voice-grade requirement will be for the first service. It is also alleged that the Commission failed to consider the fact that RCA Globcom presently leases from other carriers more transatlantic cable circuits than the other major record carriers and, therefore, will require a larger number of TAT–6 circuits to carry traffic transferred from said circuits. Therefore, it is argued that in effect the Commission has allocated RCA Globcom fewer TAT–6 circuits for new services than the other two major record carriers. RCA Globcom also contends that our Decision is inconsistent with principles of international cooperation, since it departs from the Eastbourne allocations.

6. In their oppositions to the subject petition, ITT Worldcom and WUI set forth similar arguments. Both contend that, reduced to its essentials, the subject petition argues that because RCA Globcom presently operates more circuits to TAT–6 points than ITT Worldcom and WUI, RCA Globcom should receive a larger initial allocation of TAT–6 circuits that ITT Worldcom and WUI. ITT Worldcom and WUI argue that, in view of the highly competitive nature of the international record industry, the mere fact that RCA Globcom presently operates a greater number of circuits to TAT–6 points is not an absolute indication that this will remain the same in the future. ITT Worldcom and WUI disagree with RCA Globcom's assertion that the Commission's allocation of an equal number of circuits to the three major record carriers is inconsistent with its own estimates of the record carriers' 1980 circuit requirements. These two carriers view the estimates set forth in the Decision as merely a step in the Commission's calculation of the circuit requirements for the record-carrier industry, rather than a finding by the Commission that each of the three major record carriers would have an absolute need for the number of circuits set forth in 1980. WUI further contends that the subject initial allocation of circuits is not inconsistent with the Commission's decisions relating to the TAT–4 and TAT–5 cable systems. WUI asserts that the TAT–6 Decision is distinguishable from the previous two TAT decisions because of the TAT–6 cable's significantly higher capacity and because the Commission's authorization was granted considerably further in advance of the TAT–6 operational date than in the cases of TAT–4 and TAT–5. Both ITT Worldcom and WUI contend that RCA Globcom is in no way damaged by the Commission's initial allocation of TAT–6 circuits for record use in view of the fact that the Commission placed 1,159 TAT–6 circuits in a pool for future allocation as carrier requirements develop.

DISCUSSION

7. At the outset, it must be indicated that the allocation of TAT–6 circuits in question is an *initial* allocation. We have deferred allocation of in excess of one-quarter of the capacity of the 4,000-circuit TAT–6 cable system, or 1,159 circuits, to a later date, and intend to start such further allocation to carriers on the basis of demonstrated needs as they appear at such later date, e.g., immediately prior to the operational date of TAT–6. Under such a procedure we find that unless RCA Globcom has clearly shown that it will sustain material prejudice by present initial allocation of circuits, its instant petition should be denied.[3] For the reasons set forth below, it is clear to us that RCA Globcom has not made the required showing.

8. The main thrust of the instant petition appears to be that, since RCA Globcom was operating a greater number of transatlantic circuits than the other major record carriers at the time of our Decision, it should have been granted a larger number of TAT–6 circuits than any one of those carriers under our initial allocation. As indicated in Appendix B of our Decision, as of May 31, 1972, RCA Globcom provided 42.1% of the transatlantic circuits operated by the three major record carriers. However, this, of itself does not mean that RCA Globcom will continue to provide this percentage of such circuits in the future. This is demonstrated by fluctuations which have already occurred. In our TAT–5 decision adopted May 22, 1968, *A.T. & T. et al.*, 13 F.C.C. 2d 235 (1968), we noted that RCA Globcom was providing 46% of the record circuits to Europe, Africa and the Middle East. But, according to information available to the Commission as of December 31, 1972, its relative share of total circuits had dropped 39.3% of the circuits operated by the three major record carriers to these areas. These figures, and the trend thereof, indicate that RCA Globcom will not necessarily maintain any fixed share of the transatlantic record circuits in the future.

9. Nor do we believe that the fact that the Commission in its TAT–4 and TAT–5 decisions initially allocated a greater number of circuits to RCA Globcom than to the other major record carriers and initially allocated an equal number of circuits among these carriers in its TAT–6 decision justifies the conclusion drawn by RCA Globcom that the initial allocation prescribed by the TAT–6 decision should be on the same basis to avoid inconsistency with the prescriptions in TAT–4 and TAT–5. On the contrary, we believe that analysis of these decisions discloses that our TAT–6 initial allocation of circuits to the three major record carriers is a logical extension of the rationale developed in the earlier cases if one were to take into account differences between TAT–6 on the one hand and TAT–4 and TAT–5 on the other hand. Major differences are the increased capacity and the increased time between authorization and availability for service of TAT–6 compared with the earlier cables. The expected capacities of these cables at the time of their authorization were TAT–4—128 circuits, TAT–5—

[3] We note that the participants in the Eastbourne meeting were of the belief that circuit allocations there arrived at should be subject to further review at a future date in light of then existing circumstances.

720 circuits, and TAT–6—4,000 circuits. TAT–4, TAT–5, and TAT–6, respectively, were authorized 16, 22 and 41–43 months in advance of their expected service dates. The latter factor increases the difficulty of accurately forecasting carrier circuit needs at the time of authorization, since, absent unusual circumstances, the accuracy of projected circuit needs decreases with the length of period over which such needs are projected. Moreover, the large successive increases in capacity of the TAT–5 and TAT–6 cables have allowed additional flexibility in the manner in which circuit allocations are made, which enables us to minimize these forecasting uncertainties. The method used in the cases of both TAT–5 and TAT–6 was to make an initial allocation of circuits to the carriers while retaining a reserve pool of circuits to be distributed on the basis of need forecast over a shorter time period and supported by additional data.

10. Because of the very great capacity of TAT–6, 5.56 times larger than TAT–5, we were able to authorize the three major record carriers as a group to initially acquire twice the number of TAT–6 circuits we believed they would need in 1980 and still retain 1,159 circuits in a reserve pool for future allocation to all carriers on the basis of demonstrated need. We believe this initial allocation is sound. As previously indicated, the long lead time of the TAT–6 cable system coupled with its large capacity makes accurate forecasting of individual carrier circuit needs more difficult. This difficulty is magnified by the fact that there is presently pending before the Commission an inquiry into the policy to be followed in future authorization of overseas Dataphone service, Docket No. 19558, which could affect circuit needs between AT&T and the record carriers and/or between the record carriers. In addition, we do not know at this time the nature of any rate reductions that will occur in the future, and their effect on demands which may also affect individual record carrier circuit needs in the future. In view of these factors, we felt that we could not and indeed need not, attempt to forecast individual record carrier circuit needs at the time TAT–6 is available for service with precision.

11. We cannot see how RCA Globcom is injured by this allocation. Since we have authorized the three major record carriers as a group to acquire twice the number of TAT–6 circuits we believe they will need in 1980, RCA Globcom should have an adequate number of circuits with which to formulate plans with its foreign correspondents and to provide service during the initial operational years of TAT–6. Allowing the three major record carriers to acquire twice their 1980 TAT–6 circuit needs as a group should also allow RCA Globcom sufficient latitude to handle such matters as the transfer of traffic from leased cable circuits to TAT–6 without experiencing a shortage of TAT–6 circuitry. Actually, the present initial allocation of TAT–6 circuits to the record carriers allows RCA Globcom greater flexibility than would application of the approach followed by the Commission in the TAT–5 decision, now urged by RCA Globcom, in that it permits RCA Globcom to initially acquire a greater number of circuits. If we were to have attempted to determine individual record carrier circuit needs in 1980 using the method followed in the TAT–5 decision and assuming *arguendo* that we had found, as RCA contends,

that the 354 circuit figure given in Appendix B of our Decision would be its 1980 circuit needs, RCA Globcom's initial allocation of circuits would have been calculated as follows: From the 354 circuits needed in 1980, subtract the 149 circuits RCA Globcom was operating as of May 31, 1972. This yields a requirement for 205 additional circuits. Assuming that at least one-half of this requirement will be met by satellite circuits, RCA Globcom would have need for 103 additional cable circuits. However, since it had 44 idle cable circuits in existing transatlantic cables, its need for TAT–6 circuits to meet its 1980 demand would be 59 circuits. Since under our initial allocation we allocated RCA Globcom a total of 115 TAT–6 circuits, we believe that it is obvious that it has greater flexibility than it would have had under the TAT–5 approach it suggests.

12. RCA Globcom also contends that the projected 1980 circuit needs in the Commission's Decision are inconsistent in projecting a declining rate of growth of record carrier traffic during the 1974–76 time period, while at the same time contemplating rate reductions at the time service is instituted via the TAT–6 and CANTAT–II cable system. It is argued that is evidence that the Commission failed to consider the stimulation of traffic which would be produced by such rate reductions. It must be pointed out that, unlike the TAT–5 proceeding, the carriers have not committed themselves to a fixed rate reduction, or for that matter, any rate reduction, on institution of service via these cable systems. Because of this and other factors, we stated in our Decision that, while we contemplated it would be possible that substantial decreases in charges for services might be reasonably expected to accompany the opening of the new high-capacity transatlantic facilities, we could not then indicate the magnitude of such rate reduction. Absent specific information as to the magnitude of rate reductions and the timing thereof, any calculation of a stimulation factor would have had to be based on speculation. We, therefore, did not include such a factor in our demand calculations. To date we have not received in the reports the carriers are required to file by our Decision, any additional information which makes such a calculation possible at this time. In addition, as pointed out above and elsewhere, there are uncertainties in the industry which make an accurate forecast difficult, and justify the creation of a reserve pool to be allocated at a later date to meet individual carrier needs as they develop in the future.

CONCLUSION

13. In view of the foregoing, we cannot find that RCA Globcom has demonstrated that it is prejudiced by our formulation of the initial allocation of TAT–6 circuits to the three major record carriers. As indicated hereinbefore, we believe that the present allocation allots RCA Globcom a sufficient number of TAT–6 circuits to permit it to formulate plans with its foreign correspondent and to meet its needs during the initial operational years of the TAT–6 cable system. This, coupled with the fact that there remain in the reserve pool for future allocation 1,159 circuits, 1.37 times the total capacity of TAT–5, under-

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lines the fact that there is no present need to attempt a speculative further allocation of TAT–6 circuits. Additional allocations can more appropriately, and more accurately, be made in the future when additional data is available to the Commission.

14. Accordingly, IT IS ORDERED, that the subject petition of RCA Global Communications, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–357

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re DUBUQUE TV–FM CABLE CO., DUBUQUE, IOWA, AND EAST DUBUQUE, ILL. For Certificates of Compliance	CAC–1598 (IA011), CAC–1599 (IL004)

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Dubuque TV–FM Cable Company, a division of TelePrompTer Cable Corporation, operates cable television systems at Dubuque, Iowa and East Dubuque, Illinois, communities located within a smaller television market. The following signals are now carried:

WICS–TV (CBS) Madison, Wisconsin
WHA–TV (Educ.) Madison, Wisconsin
WMT–TV (CBS) Cedar Rapids, Iowa
KCRG–TV (ABC) Cedar Rapids, Iowa
WOC–TV (NBC) Davenport, Iowa
KWWL–TV (NBC) Waterloo, Iowa
KIIN–TV (Educ.) Iowa City, Iowa
KDUB–TV (ABC) Dubuque, Iowa
WQAD–TV (ABC) Moline, Illinois
WREX–TV (ABC) Rockford, Illinois
WHBF–TV (CBS) Rock Island, Illinois
WGN–TV (Ind.) Chicago, Illinois
WFLD–TV (Ind.) Chicago, Illinois

The applicant proposes to substitute the signal of WSNS–TV (Ind.), Chicago, Illinois, for that of WFLD–TV, and these applications are unopposed.

2. This change is proposed because, with the 1973 baseball season, the games of the Chicago White Sox will be carried on WSNS–TV; in the past few years, WFLD–TV broadcast these games. We authorized the carriage of WFLD–TV several years ago to "make available to the (system's) subscribers the full schedule of Chicago White Sox games which were received on its system via the signal of WGN–TV before that station ceased carrying them." *Dubuque TV–FM Cable Co.*, 18 FCC 2d 25 (1969). Unless the signal of WSNS–TV replaces WFLD–TV, the applicant avers that the viewing habits and preferences of its subscribers, particularly White Sox fans, will be unfairly disrupted, not to say disappointed.

3. Cable television systems located in smaller television markets are now limited to the carriage of one independent signal.[1] However, this limitation is not applied to those systems, such as the applicant's, which were authorized to carry more than one independent signal before the adoption of our new cable television rules.[2] In deleting WFLD–TV, the applicant can no longer carry two independents as a matter of right, but no waiver of our signal carriage rules is requested to authorize the continued provision of two independent signals. Despite this, we believe the public interest will be served if, *sua sponte*, we waive the provisions of Section 76.59 and permit the replacement of WFLD–TV by WSNS–TV. Our earlier decision in *Dubuque TV–FM Cable Co.*, *supra*, authorizing the carriage of WFLD–TV, waived the leapfrogging prohibitions of former proposed Section 74.1107(e) because the cable system had established that there existed good cause to waive that rule.[3] As we stated then, the continued availability of Chicago White Sox games for Dubuque cable television subscribers was an important factor in our determination that good cause existed. We believe the same considerations compel a waiver of our smaller market signal carriage rules; certainly no useful purpose will be served if the applicant's subscribers are denied programming which the system has been at such pains to provide. Moreover, none of the local television stations have indicated the slightest discomfiture with this proposal.

Accordingly, IT IS ORDERED, That the applications for Certificates of Compliance (CAC–1598 and CAC–1599), filed by Dubuque TV–FM Cable Company, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[1] See Section 76.59(b) of the Rules.
[2] Paragraph 107, 36 FCC 2d 141 at 185 (1972); Section 76.65 of the Rules.
[3] Proposed Section 74.1107(e) provided that:
(e) Carriage of distant signals in areas outside any specified zone.—
(1) No CATV system operating outside the specified zones of all television broadcast stations shall extend the signal of any television broadcast station beyond the stations predicted grade B contour unless the system is carrying the signals of all television broadcast stations in the same class that are operating in communities located closer to the system. The classes of television broadcast stations to which this subparagraph is applicable are the following:
(i) Stations that are full network stations of the same network.
(ii) Stations that are partial network stations of the same network or networks.
(iii) Independent stations.
(iv) Noncommercial educational stations.
(2) The Commission may waive the provisions of subparagraph (1) of this paragraph for good cause shown in a petition filed pursuant to section 74.1109 of this chapter, such as a showing that (i) the community of the more distant station is located in the same state or (ii) the system's subscribers have a greater community of interest with the region served by the more distant station.
Dubuque, Iowa and East Dubuque, Illinois were then located outside of all television markets.

F.C.C. 73-314

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 21 AND 25 OF THE RULES TO ESTABLISH REVISED EARTH STATION COORDINATION AND INTERFERENCE CALCULATION METHODS FOR INTERNATIONAL AND DOMESTIC COMMUNICATION-SATELLITE FACILITIES BY NONGOVERNMENTAL ENTITIES	Docket No. 19495

REPORT AND ORDER

(Adopted March 21, 1973; Released April 2, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID CONCURRING IN THE RESULT.

1. This proceeding was instituted by the Commission's Notice of Proposed Rule Making adopted on April 19, 1972 (FCC 72-362, 37 FR 9229), with Erratum released on April 27, 1972 (FCC 75780), for the purposes of revising those portions of Parts 21 and 25 of the Commission's Rules and Regulations dealing with the coordination of earth stations and terrestrial stations operating in shared frequency bands and of establishing standards for frequency tolerance and emission limitations for stations in the Communication Satellite Service.

2. Comments on these proposed rule revisions were received from the following parties:

American Telephone and Telegraph Company (AT&T).
Collins Radio Company (Collins).
Communications Satellite Corporation (Comsat).
Corporation for Public Broadcasting (CPB).
Data Transmission Company (Datran).
General Electric Company (GE).
GTE Service Corporation (GTE).
Hughes Aircraft Company (Hughes).
MCI Lockheed Satellite Corporation/Microwave Communications, Inc. (MCI).
Raytheon Company (Raytheon).
RCA Global Communications, Inc. (RCA).
Stanford University, Center for Radar Astronomy (Stanford).
Western Union Telegraph Company (WU).
Western Tele-Communications, Inc. (WTCI).

3. While these parties support the general intent of the proposed rule revisions, opposition was expressed to several sections of the proposed rules as will be discussed below. Many of the numerous

suggestions and proposals submitted by these parties which do not involve matters of a substantial nature will not be specifically addressed here, but have been taken into consideration and will be adopted or rejected as reflected in the attached appendix.

4. The present §§ 21.706(c) and 25.203(c) require the submission of additional showings with earth station and terrestrial station applications which contain the results of interference analyses performed by the applicant. In view of the success experienced with the procedures adopted in § 21.100(d) for the coordination of proposed terrestrial microwave frequency assignments among other terrestrial microwave station operators and applicants prior to the filing of applications with the Commission, we proposed a similar type of prior coordination mechanism for the coordination of earth stations and terrestrial stations in shared frequency bands to replace the current requirements for the general submission of interference analyses with applications. This general proposal is supported by all the parties, except WU, who commented on this matter.

5. WU proposed that the requirement for the general submission of interference analyses with applications be retained, and that the results of these analyses be kept on file with the Commission for reference purposes, and we think that such information would be useful both to the Commission in the processing of applications and to have on file for the use of interested parties thereafter. However, in view of the general support for the prior coordination mechanism proposed in the Notice of Proposed Rule Making, and in view of the effectiveness to date of this approach in the coordination of terrestrial microwave frequency assignments, it appears that the proposed prior coordination mechanism will be, in general, an effective means of coordinating frequency assignments in shared frequency bands. Therefore, we do not see the need for the general submission of interference analyses as suggested by WU. However, the submission of more and different information may be necessary or desirable in the case of marginal interference situations as discussed below.

6. Although the proposed rule revisions did not specify a general submission of interference analyses with applications, they did propose to require the submission of analyses in marginal cases, i.e. in cases where the interference margin is less than 5 dB. This proposal is objected to by Comsat, MCI, and RCA as being unnecessary and burdensome. We are of the opinion that the making of these particular calculations cannot be burdensome because they must be made in any event with all the other calculations required for site selection and for coordination. Their submission cannot be considered burdensome since there will only be a very few such cases for each proposed site, if any, and the additional data to be submitted are few: typically, that which occupies less than a line of computer output. The submission of such information will not be unnecessary since it is these marginal cases that will often require the attention of the Commission as well as that of the carriers with whom the applicant coordinates. In addition such additional information may be required of applicants when potential interference conflicts are brought to the attention of the Commission.

We may also require the submission of any or all interference analyses should the submission of these analyses be deemed necessary in the course of examining any application.

7. While the submission of the results of interference analyses with applications will not be a general requirement, the Commission considers it necessary for earth station applications to include the technical information and parameters on which the coordination of the proposed earth station is based, and which form the basis of the computations described in §§ 25.252 through 25.255 of the proposed rules. Both AT&T and Comsat propose that a list of the minimum technical information to be provided with earth station applications should be incorporated into the rules. We agree that the inclusion of such a list in the rules would be useful, and such a list, including items mentioned in the lists proposed by AT&T and Comsat, will be incorporated into the rules to be adopted. It should be noted that this list refers only to the information to be supplied concerning the coordination of the proposed earth station, and does not include additional technical information that is required with an earth station application in order to provide the Commission with a complete description of the proposed earth station facilities.

8. In regard to the technical information to be submitted with an earth station application, Hughes and WU propose that earth station applicants be required to submit plots of the distance to the local horizon as a function of azimuth with their applications. While we agree with WU about the importance of local horizon data, we do not see the need for the general submission of horizon distance plots since these plots are not required in the generation of coordination distance contours and would not be sufficiently precise to be useful in performing detailed interference analyses. However, we are aware that horizon distances less than one kilometer violate an assumption on which the propagation curves of § 25.253 are based, and that the treatment of these cases, as well as the treatment of the use of artificial site shielding, should be fully justified by the earth station applicant, and the rules to be adopted will incorporate these considerations.

9. With regard to the amount of time to be allowed for a response to a request for coordination of a proposed earth station under the proposed § 25.203(c)(4), AT&T and MCI request that this period be extended to 45 and 60 days, respectively, in view of the larger workload associated with the coordination of an earth station, and Comsat suggests that this time period be made adjustable by mutual agreement of the parties involved. We think that these calculations will become routine as all parties become familiar with the processing of domestic satellite systems: that most of the calculations will be accomplished by computer; and that the greater number of calculations should not, by themselves, require a greater number of days or weeks for their carrying out. Therefore, we will retain the period of 30 days as a reasonable one for response but, in the interests of administrative flexibility, with the provision that this period may be increased by mutual agreement of the parties involved to a maximum of 45 days.

10. Although a number of other changes to Part 21 were proposed by the parties filing comments in this proceeding pertaining primarily

to coordination procedures, we did not propose extensive changes to Part 21, and we do not consider it appropriate to do so in this proceeding. However, we do expect to propose changes to Part 21 shortly which will specify in greater detail the coordination procedures to be followed by both terrestrial and earth station operations. For this reason we have deleted those proposed paragraphs of § 25.203(c) that described specific coordination procedures. Until the further revision of Part 21 is effective, earth station applicants should follow the procedures described in FCC Public Notices No. 562, dated September 20, 1971, and No. 597, dated May 22, 1972.

11. At the time we issued the Notice of Proposed Rule Making, we were concerned with the potential for harmful interference propagated by means of precipitation scatter mechanisms, particularly in those cases where the antenna beams of an earth station and a terrestrial station intersect in a common spatial volume. While none of the parties contend that our concern is unfounded, RCA suggests that the absence of generally established analytical techniques to treat precipitation scatter mechanisms makes the generation of rain scatter contours unnecessary, and Comsat suggests that the resolution of potential interference conflicts resulting from common volume antenna beam intersections would best be accomplished in the context of the prior coordination mechanism.

12. On the basis of the information available to us, it is clear that the potential for harmful interference resulting from common volume intersections of antenna beams is sufficiently great that this potential interference mode should not be neglected. While general analytical techniques may not be currently available to treat all of the potential precipitation scatter interference modes, such as scattering from a side lobe into a main lobe, techniques are currently available to ascertain the existence of common volumes caused by main beam intersections (e.g. FCC Report R-7201, "PERDIS—A Computer Program to Determine if Two Antenna Beams Intersect and Provide the Perpendicular Distance Between the Beam Axes"). Guidelines in the analysis of such situations is also provided in other sources (e.g. CCIR Report 339-1, New Delhi, 1970). For these reasons, it is appropriate that considerations of the potential for harmful interference due to antenna beam common volume intersections be incorporated into the rules at this time.

13. Since rain scatter contours computed in accordance with the proposed § 25.254 are required for international coordination, and since these contours are necessary for finding the area in which common volumes caused by main beam intersections are to be prohibited, this requirement will be retained in the rules to be adopted. While we find some merit in Comsat's suggestion that the resolution of these cases may be more effectively handled in the prior coordination mechanism, we consider it necessary at this time to prohibit such intersections as a general rule and treat on an individual waiver basis applications for stations having main beam intersections. For such a waiver to be considered, we will require an earth station or terrestrial station applicant, whose proposal includes a common volume intersection, to submit

with his application, a showing setting forth the nature of the intersection, the parties with whom coordination was attempted, the results of the coordination, and the detailed technical basis on which it is concluded that harmful interference will not result.

14. With respect to the treatment of common volume intersections, we will modify the rain heights originally specified in §§ 21.706(c) and 25.203(e) of the proposed rule revisions as suggested by Comsat and GTE to bring them into accordance with the values adopted by the WARC–ST, now specifying them in Table 1 of § 25.254(b). A new map, based on these values, which more clearly defines the rain zones for the contiguous United States is given in Figure 2 of § 25.254. We also find merit in Comsat's suggestion that, for the purposes of determining antenna beam intersections, the antenna beam be defined by the points at which the antenna gain is 15 dB below the main beam gain, rather than the 20 dB figure contained in the proposed rule revisions and this figure of 15 dB will be incorporated in the rules to be adopted.

15. In our Notice of Proposed Rule Making, we proposed the establishment of standards for frequency tolerances for earth stations and space stations and standards for emission limitations. The standards proposed for earth station frequency tolerance in the new § 25.202(e) are considered unnecessarily stringent by Comsat, GTE, and Raytheon, who propose the values of .005%, ±80 kHz, and .002%, respectively. The Commission notes, however, that the earth stations operating with Intelsat satellites are currently licensed with a frequency tolerance of .001% and that applicants for domestic satellite earth station authorizations propose to employ transmitters with frequency tolerances at least as stringent. It therefore appears that a frequency tolerance of .001% is readily attainable under the current state of the art in earth station transmitting equipment design, and it is this value that will be adopted.

16. Proposals for space station frequency tolerances for the reserved § 25.202(f) were received from Comsat, Hughes, and MCI. Comsat suggests a value of .005% for frequencies above 1 GHz, and MCI proposes a table be adopted for limits on frequency translation errors, with values ranging from .0005% to .005% depending on the observation period and the downlink frequency band. Hughes comments that space station frequency tolerance standards are unnecessary, but that if the Commission decided that such a standard be adopted, it should be no more stringent than .0015% and preferably should be consistent with the current lower terrestrial standard. We are not persuaded by the arguments of Hughes that space station frequency tolerance standards are unecessary, since for one reason, they are necessary to limit out-of-band emissions. Reviewing the information available to us, we conclude that a frequency tolerance design objective of .001% for satellite transmitters is attainable under the current state of the art. Taking into account earth station uplink frequency errors of .001%, it appears that a space station frequency tolerance of .002% should be the value to be adopted.

17. In regard to the standards proposed for emission limitations in the new § 25.202(g), Comsat argues that these standards should be

deleted as they are unnecessary for frequency coordination purposes since interference analyses are performed on a co-channel basis, and out-of-band emissions are categorically prohibited. We are not persuaded by this argument, however, since it is possible that potential interference conflicts might be resolved by an earth station and a terrestrial station employing only non-overlapping portions of the shared frequency band. Therefore, we will adopt the emission limitation standards as proposed, noting that these standards are generally consistent with the standards adopted for other services operating in frequency bands shared with the communication-satellite service.

18. With respect to the antenna performance standards proposed under the new § 25.209, comments were received from Collins, Comsat, GE, Hughes, MCI, Raytheon, Stanford, WU, and WTCI, with Collins and Stanford commenting at length, arguing that all or a portion of the proposed standards were too stringent or unattainable in practice. It is further argued that since the envelope defined in § 25.209(a)(3) is based on a CCIR Recommendation referring to an average envelope of sidelobe levels, it is inappropriate to impose this standard as an envelope of peak sidelobe levels. GE proposes that the contents of this section be reserved for future study, and Hughes proposes that the standards be set forth in terms of guidelines rather than rules. Comsat suggests that the standard for transmitting antennas be expressed in terms of radiated power densities rather than a gain pattern, and both Comsat and Hughes propose that the standards be stated in terms of smoothed values rather than as an envelope of peak values. Opposition to the minimum antenna size that would be imposed by the adoption of a minimum d/λ ratio was also expressed by Comsat, MCI, Raytheon, WU, and WTCI.

19. We do not agree with the propositions that this matter should be deferred for future study or that it should be implemented as guidelines rather than as rules. Since the interests of efficient spectrum utilization are served by the use of high performance antennas, we consider it preferable, in view of the large number of proposed and anticipated earth stations in domestic satellite systems, to have these stations initially equipped with high performance antennas, rather than defer the matter to a time when investment in lower performance antennas would make it difficult, on an economic basis, to impose more stringent performance standards.

20. We agree with the parties that the imposition of the proposed $32-25\log\theta$ envelope on peak sidelobe levels is unnecessarily stringent. However, in view of the wide use made of this formula in interference studies, we consider it more appropriate to retain this formula with the provisions for sidelobe smoothing to demonstrate compliance rather than adopting a different formula or expressing the standard in terms of power densities. Accordingly, we will modify this standard to allow for the averaging of up to two consecutive sidelobes on both sides of the sidelobe under consideration, provided that no sidelobe exceed the envelope by more than 6 dB.

21. Since we are concerned only with the performance of antennas and not of their specific design, we find merit with the position that

the minimum d/λ ratio is unnecessary, and we therefore delete this requirement from the rules to be adopted.

22. Several modifications to Table 1 of § 25.252 proposed by AT&T merit discussion. While we agree with AT&T that digital systems will require the inclusion of a separate set of parameter values in this table, we consider it premature to do so now in view of the limited experience to date regarding digital systems that may be implemented domestically. We consider it preferable that the coordination of digital systems be handled on a case by case basis until sufficient experience is gained to justify the institution of a rule making proceeding to appropriately modify the rules to treat digital systems. Neither do we agree with AT&T's proposal that the "exceptional interval" allocated to interference be further sub-allocated between near great circle propagation mechanisms and precipitation scatter propagation mechanisms. We note that, for a given receiving system, the maximum short-term permissible interference power level $P_{max}(p)$, which is the short-term criteria of harmful interference, is not dependent on the propagation mechanism by which the interference is propagated. However, since this level is dependent on the number of interference entries assumed, the net effect of adopting AT&T's proposal would be to double the number of interference entries assumed, which would incorporate an additional degree of conservatism in the interference calculations. Since we do not consider AT&T's arguments sufficient to justify this increase, we will not adopt this proposal in the rules to be adopted.

23. With regard to AT&T's proposal to standardize the earth station reference bandwidth to 1 MHz, we find merit with this proposal and will incorporate it in the rules to be adopted. We also note that the terrestrial station powers specified in Table 1 of § 25.252 are total powers and are not adjusted to the earth station reference bandwidth. While this adjustment may be neither necessary or desirable in the course of generating coordination distance contours or performing preliminary interference analyses, it may be desirable to incorporate this adjustment in performing detailed interference analyses, and we will include a provision to this effect in the rules. However, since the value of this adjustment will depend, in part, on the spectrum distribution of the terrestrial emission, we will leave the determination of the value of this factor to the parties involved on a case by case basis. We also find merit in AT&T's proposed inclusion of language to provide for adjustment of terrestrial station power increases in the foreseeable future to allow for growth in capacity from the implementation of new carrier systems, and will incorporate AT&T's proposed language to this effect.

24. In our Notice of Proposed Rule Making, we provided for an alternative method of defining the maximum permissible interference power level $P_{max}(p)$ in § 25.252(b) for the short-term percentage of the time. AT&T and Comsat argue that such an alternative is unnecessary and confusing, and AT&T notes that a proposal has been made to delete the CCIR report on which the proposed formula is based. Moreover, both AT&T and Comsat point out that the formula is not appropriate for the definition of the maximum permissible interference power level for the long-term percentage of the time necessary in the

performance of detailed interference analyses, and propose the inclusion of a formula for this case. We find merit in these comments, and will therefore delete this alternative formula and replace § 25.252(b) with the formula proposed for computing the long-term percentage of the time maximum permissible interference power level $P_{max}(20\%)$. With respect to the values to be incorporated into Table 1 for n_{20}, we do not find sufficient justification for the specific values proposed by AT&T. Therefore, while we will amend Table 1 to include this new parameter, which is now to be distinguished in concept from the corresponding short-term parameter n, initially we will assign to it the same values as to n, consistent with the 1972 revision of CCIR Report 448.

25. Comsat proposed to include in § 25.253(f) the effect of "aperture-to-medium" coupling loss in the determination of the coordination distance at azimuths where the earth station antenna elevation angle is less than 12 degrees. We are not ready, at this time, to permit advantage to be taken of this phenomena since CCIR Report 238–1 now states in part:

> "For purposes of computing interference fields, the antenna-to-medium loss does not apply since fields much stronger than the median are usually coherent and do not experience this loss."

With respect to Comsat's proposal to define the coastal strips in § 25.253(c) in terms of the values 100 meters above sea level and 50 kilometers inland, it appears reasonable to adopt this definition, at least on an interim basis.

26. We also find merit to the comments of several parties that the provisions for the three approaches to performing preliminary analyses listed in § 25.255(a) of the proposed rule revisions are unnecessary and could result in needless confusion and discrepancies between parties seeking to effect coordination. We will therefore delete reference to all but the first of these approaches in the rules to be adopted, since this is the one preferred by the parties commenting on this matter. In order to minimize inconsistencies in computing near great circle propagation loss necessary to perform detailed interference analyses, we will also amend § 25.255(d)(5) to delete references to analytical techniques other than NBS Technote 101, as suggested by several of the parties, and incorporate several other proposals intended to clarify the use of these techniques.

27. With regard to the antenna pattern of terrestrial stations to be used in the coordination procedure, we realize the simplifications that will result from the use of standard reference antenna patterns in the initial attempts at coordination. We attempted to treat this matter in the proposed rule revisions by proposing a standard pattern based on the representative maximum terrestrial antenna gains specified in Table 1 of the proposed § 25.252 and the sidelobe suppression standard B of § 21.108(c). AT&T and Comsat object to this standard on the grounds that this pattern is unduly conservative, and each proposes a different pattern for incorporation into the rules. While the standard we proposed may be conservative, neither AT&T nor Comsat has adequately justified the incorporation of the particular standard pattern proposed by it in the rules to be adopted.

28. It must be remembered that the use of a standard reference terrestrial antenna pattern during the first stages of the coordination procedure is both for computational convenience, in that its use will reduce the need to treat large amounts of data regarding different actual terrestrial station antennas, and to insure that all terrestrial stations that could likely cause or receive interference are taken into account. Therefore, the choice of reference patterns should be sufficiently conservative so as to make it unlikely that an actual interference situation would be eliminated from further consideration. A terrestrial antenna pattern based on sidelobe suppression standard B of § 21.108(c) satisfies this requirement since this describes antennas of the poorest performance that should be operating, and reference to it will be retained in the rules to be adopted. However, adoption by the Commission of this pattern for use in the early, screening stages of coordination, does not imply that the Commission will permit, or continue to permit, such antennas to be used by terrestrial operators. If analysis shows that interference would likely result to or from a terrestrial station actually employing such an antenna, and that an antenna of better performance would eliminate that likelihood, then the provisions of §§ 21.108(c) and 21.109(c) apply.

29. GE also suggests that provisions be made in the rules to accommodate the use of several advanced techniques, such as site shielding, space filtering, and frequency interleaving, in performing interference analyses. However, with the exception of allowances for site shielding, it appears that the use of standard assumptions and techniques to the maximum extent feasible, particularly the assumption of co-channel operation, will simplify the administrative burden of the coordination process and aid facility planning. Therefore, since specific technical proposals for the implementation of these techniques have not been advanced for incorporation in the rules, we do not consider it appropriate at this time to include a general provision in the rules to this effect as suggested by GE. However, this action is not intended to foreclose the use of these advanced techniques in the coordination process; it is only to limit their use to cases in which the use of standard techniques is not sufficient to effect coordination. In the case of site shielding, values in excess of those implied by the standard curves for loss can be used in individual cases if they can be supported by theoretical calculations or actual measurements as described in § 25.203(b).

30. With respect to the comments of several parties regarding ambiguities in the proposed rules concerning the instances in which the use of the values for the parameters listed in Table 1 of § 25.252 is mandatory, the language of the rules to be adopted will be modified to resolve these ambiguities. Our intent was and is that, unless a showing is made to the Commission that another choice of values is more appropriate for the particular case under consideration, the use of the values of this table is mandatory for the generation of coordination distance contours and in the computation of the maximum permissible interference power levels. In performing preliminary and detailed interference analyses, values specified in the table for parameters not entering into the determination of the maximum permissible in-

terference power level should be used unless the actual values are known, or the use of other values is provided for in § 25.255(d) of the rules to be adopted.

31. With respect to the comments of Comsat that references to the "Communication-Satellite Service" be changed to the "Fixed Satellite Service", and the comments of CPB regarding the desirability of incorporating provisions for the coordination of facilities operating in the 2500–2690 MHz frequency band allocated by the WARC–ST to the Instructional Television Fixed Service, consideration of these matters will be more appropriate in the context of more general future rule making proceedings to be initiated shortly to implement the results of the WARC–ST, rather than in this limited proceeding.

32. Finally, we note the comments of Datran pointing to the extensive use made of computers to automate the coordination process and suggesting that the various data curves presented graphically in the rules also be presented in a form more convenient for computer implementation in order to minimize discrepancies in the calculations performed by different parties. While we are not in a position to advance specific proposals to this effect at the present time, we find considerable merit in these comments. However, rather than incorporate these proposals formally in the rules, the establishment of computer compatible representations for this data would be more appropriately handled on an informal basis, together with the refinement of various details regarding the coordination process.

33. Accordingly, IT IS ORDERED, That, pursuant to the authority contained in Sections 1, 2, 3, 4(i) and (j), 214, 301, 303, 307–309 and 403 of the Communications Act of 1934, as amended, and Sections 102(d) and 201(c)(6) and (11) of the Communications Satellite Act of 1962, Parts 21 and 25 of the Commission's Rules and Regulations ARE AMENDED as set forth in the attached appendix effective May 7, 1973.[1]

34. IT IS FURTHER ORDERED, That the proceedings in Docket 19495 ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] For amendments to the FCC Rules and Regulations see Federal Register of April 4, 1973. 38 F.R. 8569.

F.C.C. 73-346

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re EASTERN CONNECTICUT CABLE TELEVISION, INC., NEW LONDON, EAST LYME, MONTVILLE, AND WATERFORD, CONN. For Certificates of Compliance	CAC-534 CT017 CAC-535 CT018 CAC-536 CT019 CAC-537 CT020

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. Eastern Connecticut Cable Television, Inc., has applied for certificates of compliance to begin cable television service at New London, East Lyme, Montville and Waterford, Connecticut, communities located outside of all television markets. Eastern Connecticut originally proposed carriage of the following television signals:

WTIC-TV (CBS) Hartford, Connecticut
WHCT (Ind.) Hartford, Connecticut
WHNB-TV (NBC) New Britain, Connecticut
WTNH-TV (ABC) New Haven, Connecticut
WEDN (Educ.) Norwich, Connecticut
WTEV (ABC) Providence, Rhode Island
WJAR-TV (NBC) Providence, Rhode Island
WPRI-TV (CBS) Providence, Rhode Island
WNAC-TV (CBS) Boston, Massachusetts
WGBH-TV (Educ.) Boston, Massachusetts
WSKB-TV (Ind.) Boston, Massachusetts
WKBG-TV (Ind.) Cambridge, Massachusetts
WSMW-TV (Ind.) Worcester, Massachusetts
WNEW-TV (Ind.) New York, New York
WOR-TV (Ind.) New York, New York
WPIX (Ind.) New York, New York

These applications were opposed by Connecticut Educational Television Corporation; Broadcast Plaza, Inc., licensee of Station WTIC-TV, Hartford, Connecticut; and Connecticut Television, Inc., licensee of Station WHNB-TV, New Britain, Connecticut. Connecticut Educational Television Corporation's opposition was limited to the proposal to carry WGBH-TV; however, Eastern Connecticut has

withdrawn its request to carry WGBH–TV, which moots CETC's opposition.

2. Broadcast Plaza and Connecticut Television both objected that the franchises awarded Eastern Connecticut fail to comply with Section 76.31 of the Commission's Rules. This objection has been separately considered and denied. *Valley Cable Vision, Inc.*, FCC 72–1169, 38 FCC 2d 959; *reconsideration denied*, FCC 73–291, ——— FCC 2d ———. Connecticut Television also advances the following arguments: (a) that special signal carriage and exclusivity rules should be applied throughout the Hartford-New Haven-New Britain-Waterbury market area of dominant influence (the Hartford ADI), and (b) that the Connecticut Public Utilities Commission's evaluation of the applicants is, in many instances, no longer relevant in view of ownership changes which have occurred since these franchises were awarded.

3. In support of 2(a) above, Connecticut Television argues that the Hartford ADI receives a number of overlapping television signals which present an economic threat to the station, and urges that we limit cable television systems operating in the Hartford ADI—consisting of the counties of Hartford, New Haven, Middlesex, Litchfield and Tolland—to carriage of only in-state educational stations, two distant independents, and out-of-state network-affiliates with the proviso that Connecticut network affiliates be afforded network program exclusivity regardless of the relative intensity of signals. In support of 2(b) above, Connecticut Television argues that the PUC's 1964 evaluation of Eastern Connecticut is no longer valid because the then largest single stockholder later disposed of its holdings. As a consequence, Connecticut Television questions the financial ability of Eastern Connecticut to construct systems consistent with the demands of the new cable television rules, and argues that the PUC must again satisfy itself of the applicant's qualifications.

4. We find the objections to be without merit. (a) the special signal carriage and exclusivity requirements which Connecticut Television would have us impose have no apparent bearing upon these applications since the communities involved are located outside all television markets and beyond the Hartford ADI as well, and (b) we find unpersuasive the argument that withdrawal of a minority stockholder somehow requires delay in our action while the PUC decides whether to re-examine Eastern Connecticut's qualifications. Eastern Connecticut's applications are consistent with our rules and we have no requirement which would require us to defer action. Nor do Connecticut Television's allegations suggest any special circumstances which would justify such action.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications (CAC–534, 535, 536, 537) for certificates of compliance filed by Eastern Connecticut Cable Television, Inc., for New London, East Lyme, Montville,

and Waterford, Connecticut ARE GRANTED and appropriate certificates of compliance will be issued.

IT IS FURTHER ORDERED, That the "Petition to Withhold Certification" filed July 12, 1972, by Broadcast Plaza, Inc. IS DENIED.

IT IS FURTHER ORDERED, That the "Objections of Connecticut Television, Inc." filed July 12, 1972, ARE DENIED.

IT IS FURTHER ORDERED, That the "Objections to Application for Certification" filed July 12, 1972, by Connecticut Educational Television Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

40 F.C.C. 2d

109-035—73——3

F.C.C. 73R-140

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GUY S. ERWAY, WEST PALM BEACH, FLA.	Docket No. 19601 File No. BPH-7137
SANDPIPER BROADCASTING CO., INC., WEST PALM BEACH, FLA.	Docket No. 19602 File No. BPH-7533
SUN SAND AND SEA, INC., WEST PALM BEACH, FLA.	Docket No. 19603 File No. BPH-7809
MARSHALL W. ROWLAND, WEST PALM BEACH, FLA. For Construction Permits	Docket No. 19604 File No. BPH-7843

MEMORANDUM OPINION AND ORDER

(Adopted April 2, 1973; Released April 4, 1973)

BY THE REVIEW BOARD: BOARD MEMBER NELSON CONCURRING; BOARD MEMBER KESSLER ABSENT.

1. Before the Review Board for consideration is a petition to enlarge issues, filed November 10, 1972, by Sun Sand and Sea, Inc. (Sun),[1] directed against the application of Guy S. Erway.[2] Although

[1] Other related pleadings before the Board for consideration are: (1) opposition, filed December 22, 1972, by Erway; (2) Broadcast Bureau's comments, filed December 22, 1972; and (3) reply, filed January 26, 1973, by Sun.

[2] Petitioner seeks the addition of the following issues against Erway:

A. To determine whether Guy S. Erway has misrepresented material facts to the Commission including the following:

1. the availability, acceptability and estimated costs of his proposed antenna tower;
2. the overall estimated costs of his equipment;
3. Mr. Erway's availability to participate in the operation of the proposed West Palm Beach station in light of his conflicting proposal in his application for an FM station in Watkins Glen-Montour Falls, New York;
4. the accuracy and completeness of his financial statements in light of his undisclosed commitment to the undisclosed FM application in Watkins Glen-Montour Falls, New York and sale of assets in Erway Broadcasting Corporation without reduction in stated value;
5. whether the application generally contains false or misleading statements or omissions of material facts or was lacking in candor in connection with relevant facts;
6. whether, in light of evidence adduced pursuant to each of the above sub-issues the applicant should be disqualified as failing to possess the requisite qualifications to be a Commission licensee or in the event he is found not disqualified on any sub-issue whether he should be accorded a comparative element on any such sub-issue.

B. To determine whether Guy S. Erway has failed to completely disclose material information to the Commission in his application as required by Section 1.514 of the Commission's Rules and, if so, the effect of such conduct on his requisite and/or comparative qualifications to be a Commission licensee.

C. To determine whether Guy S. Erway has failed to comply with the provisions of Section 1.65 of the Commission's Rules and, if so, the effect of such conduct on his requisite and/or comparative qualifications to be a Commission licensee.

D. Whether in light of the evidence adduced in issue A(1) above Erway's proposed antenna and antenna site is sufficient to meet the Commission's technical requirements.

E. Whether in light of the evidence adduced in issues A(1) and (2) and issue 4 above, Guy S. Erway is financially qualified to construct and operate the proposed station.

F. Whether in light of the evidence adduced in the above issues, Guy S. Erway has

petitioner requests a miscellany of issues, some requests, particularly those relating to allegations of misrepresentation and related issues, are based on the same sets of factual allegations. The Review Board will, therefore, deal initially with the more narrowly-drawn requests, and then proceed to an examination of those requests which are broader in scope.

2. On November 11, 1971, Erway submitted a pre-designation amendment to reflect changes in its engineering proposal; specifically, the applicant proposes, *inter alia*, to utilize a self-supporting monopole antenna with an overall height of 313 feet above ground.[3] In a corollary pre-designation amendment, dated November 30, 1971, the applicant stated that its total revised equipment costs estimate of $30,000 includes $10,000 as the cost of the monopole antenna.[4] This estimate is challenged as deficient by Sun. As related by petitioner, in a letter response to its inquiry, an engineering sales representative of Union Metal indicated that a monopole antenna of 330 feet specification would cost between $18,000 and $25,000, plus shipping charges of $3,000; therefore, Sun contends that nearly all of the funds Erway has allocated for equipment costs could be required for the purchase of its proposed antenna alone. Sun's request, however, insofar as it challenges Erway's cost estimates, has been effectively mooted as a result of a recent financial amendment, which was accepted by Order, FCC 73M–258, released February 26, 1973. Thus, Erway has increased its total equipment costs estimate from $30,000 to $50,000; and, according to an equipment lease agreement, its first-year equipment costs for the antenna will amount to $16,000. Sun's request for a financial issue will therefore be denied.

3. In the letter relied upon and submitted as a supporting affidavit by Sun, the Union Metal sales representative states that, although its existing line of monopole towers reaches 250 feet in maximum height, the company believes that it would be possible to design and build a self-supporting tower of 330 feet in height.[5] The sales representative notes further that the predicted deflection of the existing line of poles is approximately 25% of its height under a maximum load of 170 miles per hour; that this figure could be reduced somewhat by constructing a pole of larger diameter and/or increased wall thickness; but that absent more information (relating to maximum sway figure allowable) he could not predict how much the sway factor could be reduced. Based upon this letter, Sun alleges: (1) that there is no assurance that the proposed monopole structure could be constructed in such a manner as

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demonstrated ineptness and the effect of that ineptness upon his requisite and/or comparative qualifications to be a Commission licensee.

G. To determine whether Guy S. Erway has engaged in "trafficking" in broadcast licenses, and whether, in light of the evidence adduced, Erway has the requisite qualifications to be a licensee of the Commission and, if so, the effect of such matters upon his comparative qualifications.

H. To determine, on a comparative basis, whether the horizontal radiation proposed by Erway is inferior in reception characteristics to the circular polarized radiation proposed by the other applicants in this proceeding.

[3] Erway indicated that this type of structure is currently manufactured by the Union Metal Manufacturing Company (Union Metal).

[4] This estimate, according to Erway, was based upon the advice of its consulting engineer; an affidavit to this effect, executed by the engineer, is attached to Erway's opposition.

[5] The height used by petitioner is the proposed height of the Erway tower above mean sea level, rather than the actual proposed height above ground, which is 313 feet with obstruction lighting, or 310 feet without such lighting.

to provide for an acceptable base for an FM antenna; (2) that if that were the case, Erway's site would be unacceptable since it is too small for the location of guyed supports, and (3) that the deflection of a monopole antenna of 330 feet could be so severe under predictable conditions that an FM signal would be substantially degraded, particularly in light of the fact that Erway proposes "horizontal radiation only". Sun's "blunderbuss" request for an issue inquiring variously into the adequacy of Erway's antenna system and site will be denied, because of insufficient allegations. Sun not only predicates its request on incorrect and incomplete specifications which lack the specificity required by the Rules (Section 1.229(c)),[6] but in some instances (most notably arguments 2 and 3 above) its allegations are purely conclusory and speculative in nature. Moreover, the reliability of Sun's supporting letter in this regard is open to question, because petitioner has not represented that the affiant is qualified to address himself to matters of considerable engineering complexity.

4. In support of a requested trafficking issue, Sun alleges, that during the period of time between October, 1966, and January, 1972, Erway sold two FM stations, both held for less than three years, and two AM stations, both held for slightly over three years.[7] These transactions, according to petitioner, have resulted in enormous profits; the total purchase price for all stations was $30,000; the total sale price was $268,000, representing allegedly over a 500% profit on the original investment, giving allowance for lease or construction expenses. Sun contends further that Erway's conduct constitutes an on-going pattern, noting in this connection that, while Erway was selling a station and a CP for an unbuilt FM station in one community, he was simultaneously seeking a CP in West Palm Beach, Florida. Sun further alleges that it was Erway's obvious intention to sell the unbuilt Montour Falls FM station from the time of acquisition of the construction permit. This intention is indicated, petitioner explains, by several factors:

[6] In this connection, the Board is constrained to point out that a scrupulous attention to factual accuracy on the part of petitioners would facilitate a more expeditious resolution of matters before the Board.

[7] The following chart indicates the buying and selling pattern of Erway, according to petitioner:

Station and location	Acquisition date and purchase price	Date assignment sought or accomplished and purchase price	Time held
1. AM Station WAYE Baltimore, Md.	1955	Sold Sept. 1967	12 years.
2. AM Station WSEB, Sebring, Fla.	1966, $30,000*	Sold June 1970, $112,000.**	Approx. 3½ years.
3. FM Station WSEB Sebring, Fla.	----do	----do	2 years 11 months from date of program test authorization.
4. AM Station WGMF Watkins Glen, N.Y.	CP—Nov. 1967	Sought Jan. 1972, $155,000.***	3½ years.
5. FM Station WXXY Montour Falls, N.Y.	CP—Dec. 1970	Sought Jan. 1972, $1,000 (cost).***	More than 1 year unbuilt.
6. Proposed FM station West Palm Beach, Fla.		Sought May 1970.	

*Bought as combination for $30,000.
**Sold as combination for $112,000.
***Sold as combination for $156,000.

(1) applications for Montour Falls and West Palm Beach [8] were filed almost concurrently; (2) Erway represented in its Montour Falls application that he would devote as much time as necessary to that proposal, while, at the same time, he was proposed as a full-time employee in the West Palm Beach application; and (3) after holding the Montour Falls CP for over a year, he requested an extension of time, indicating that his construction progress consisted of the single act of purchasing land.

5. According to Erway, its capital expenditures for the four stations in question amounted to $93,740, in addition to its original investment of $30,000; given these figures, the applicant asserts, its profits cannot be characterized as extraordinary. These expenditures were of particular importance to the Sebring stations, Erway explains, since at the time of purchase the AM was silent and the FM was as yet unbuilt and both required completely new equipment. Erway also alleges that WGMF was not a profitable operation, requiring loans from the Erway Broadcasting Corporation which were ultimately repaid upon transfer. Erway explains that the failure to report his interest in WXXY, Montour Falls, was inadvertent, and that for all practical purpose the reference to the WGMF corporate name [9] in the instant application indicates that Watkins Glen-Montour Falls constitute one market in any event. Finally, Erway maintains that he did not make inconsistent statements with respect to his proposed integration in his various applications; on the contrary, he states, while he did propose to be a full-time manager in the West Palm Beach application, he in no way indicated that he would move to Montour Falls from West Palm Beach, or that his participation would be more than part-time in the WXXY application.

6. Whether or not a trafficking issue is warranted turns on the showing made by a petitioner with respect to three elements—time, price and intention to profit from the sale of broadcast properties. The Board is of the view that Sun has raised sufficient question concerning all three elements to warrant the addition of an issue. During a period of approximately 5½ years, Erway both acquired and relinquished interests in four broadcast facilities, none of which was held for more than 3½ years and one of which was never constructed. Second, even though capital expenditures were made for improvements in three of these facilities, the assignor nevertheless realized a clear and substantial profit from the sale of both AM–FM combinations, over and above these investments.[10] Aside from the above discussed elements of time and price, there are several factors which may either bear on or arguably be relevant to Erway's alleged intent and, as a consequence, merit further examination. One is Erway's acknowledged failure, both in the instant application and in subsequent amendments, to reflect his interest in an almost concurrently

[8] As a related matter, Sun notes that Erway failed to report the existence of its Montour Falls application in the instant application, as well as in several subsequent amendments; the first mention of the Montour Falls was in an amendment, filed June 21, 1972, in which Erway indicated that he had disposed of WXXY.

[9] *i.e.* Watkins Glen-Montour Falls Broadcasting Corporation.

[10] The assignor cleared, according to Erway's figures, approximately $28,000 from the sale of the Sebring, Florida, AM–FM combination and approximately $116,000 from the sale of the Watkins Glen-Montour Falls combination.

filed application for an FM facility in Montour Falls, until such time as he had sold that interest. Second, the Board is of the view that there is some question as to the precise value of the Montour Falls CP in the WGMF–WXXY "package" sale, even though its ascribed value is asserted to be $1,000 by Erway. And third, Erway has not adequately explained his reasons for relinquishing his broadcast interest in the two markets involved.[11] In these respects, Erway has failed to allay the doubts raised by Sun's allegations as to intent. An issue will therefore be added.

7. Sun's request for a comparative engineering issue is based upon alleged differences in the radiation efficiency attributable to the various antenna polarization techniques proposed in this proceeding; according to petitioner, a circular polarized FM transmission, such as the one it proposes,[12] results in reception which is clearly and demonstrably superior to that achieved by a horizontal polarized FM system, which Erway proposes to utilize. As pointed out by the Broadcast Bureau, the Commission has indicated that differences in antenna polarization techniques can result in differences in radiation efficiency, and, moreover, that advantages can be achieved by utilization of circular or elliptical polarization. See *Report and Order in the Matter of Amendment of Section 73.316*, 4 RR 2d 1582 (1965). The Board is therefore of the view that the differences alleged are an appropriate subject for comparison of the applicants. However, we agree with Sun and the Bureau that this comparison is properly encompassed within the efficient use of frequency criterion of the standard comparative issue; [13] therefore, a separate issue is not required. Rather, as when seeking comparative evaluation of areas and populations under the same criterion, an applicant, as an initial matter, should make a *prima facie* showing of engineering differences before the Administrative Law Judge.[14]

8. Sun's requests for the related issues of misrepresentation, Sections 1.514 and 1.65, lack of candor and general ineptness are based on various sets of allegations, which we shall now consider.[15] Prior to the most recent financial amendment (see paragraph 2, *supra*), Erway had represented to the Commission that his cost estimates were more than adequate to finance his complete equipment costs. As noted by Sun, there is some doubt as to whether or not the cost estimates were, in fact, adequate; however, even if this were found to be the case, we do not believe that this would constitute an adequate basis for a

[11] We believe that the cursory explanations given in the two assignment applications—the need to obtain special schooling for his son and the intention to pursue business interests (including broadcast interests) elsewhere—need further elaboration.

[12] Two other applicants in the proceeding also propose circular radiation.

[13] See paragraph 5 of the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 398, 5 RR 2d 1901, 1913 (1965).

[14] At a prehearing conference held November 6, 1972, the Administrative Law Judge indicated that, in his view, a separate engineering issue would be required in order to examine these alleged differences. In light of our determination herein, petitioner should renew its request before the presiding judge.

[15] As a preface to these requests, petitioner asserts that Erway, as a former licensee of WAYE, Baltimore, Maryland, had been found guilty of violation of Commission Rules and that this past misconduct magnifies the gravity of currently alleged violations. However, upon reconsideration of that action, the Commission noted that Erway had never been given official notice of the two violations on the part of its employee during the time it was licensee of that station. (See FCC 69–1156, adopted November 22, 1969.) Given this explanation, the Board is of the view that this past conduct cannot fairly be held to substantially reflect on Erway as an applicant in this proceeding.

misrepresentation issue. Although there may be some question as to whether or not Erway exercised sufficient care in designing all aspects of his proposal,[16] there is no indication that there was any attempt to misrepresent the facts, and petitioner's argument in this regard is sheer speculation. Nor do we find that Erway's representations as to his proposed roles in the Montour Falls and West Palm Beach operations are inconsistent. As explained by Erway, his proposed full-time participation in the West Palm Beach application would not have precluded the more limited participation which had been proposed in connection with the Montour Falls operation. Petitioner's contention that Erway's March 1, 1970, evaluation of the assets of Erway Broadcasting Corporation should have been altered because of the sale of the two AM–FM combinations discussed above is unsubstantiated; petitioner has not advanced any basis, whatsoever, for assuming that the conversion of assets resulted in the diminution in the value of the corporation.[17]

9. In contrast, Erway's failure to disclose the existence of his interest in the then-pending Montour Falls FM application when he filed this application for West Palm Beach, Florida, clearly warrants the addition of a Section 1.514 issue; the requisite application Form 301 requires disclosure of the existence of *any* application pending before the Commission. Although Erway subsequently amended the West Palm Beach application a number of times, he did not disclose the existence of the Montour Falls application in any of these, even though two of the amendments dealt specifically with his broadcast interests. Significantly, he did not amend the application in this respect until June 21, 1972, in order to report the sale of the Montour Falls construction permit even though the application was granted on December 23, 1970, an application for call letters was filed on August 16, 1971, and an application to transfer the construction permit was filed on January 18, 1972 and granted on April 20, 1972. Accordingly, a Section 1.65 issue will also be added to determine whether the application was maintained in current status. Finally, since the question of intent, together with other surrounding circumstances, may be explored under the Rule 1.514 and 1.65 issues being added herein, addition of a separate misrepresentation issue is unnecessary.

10. ACCORDINGLY, IT IS ORDERED, That the petition to enlarge issues, filed November 10, 1972, by Sun Sand and Sea, Inc., IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

11. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

(a) To determine whether Guy S. Erway has engaged in trafficking in broadcast licenses; and if so, to determine the effect of such mis-

[16] In this connection, the Board notes that Sun has advanced insufficient allegations to warrant the addition of an ineptness issue.

[17] The valuation of the corporation was increased from $650,000 to $707,000 in an October 31, 1971 financial statement. As Sun correctly notes, Erway was unable to explain precisely how this appreciated value had been ascertained, but speculated that it may have represented a change in the fair market value of an asset or reflected the addition of interest on notes due the corporation. In any event, petitioner's allegations do not indicate that the appreciated valuation is inaccurate or overvalued.

conduct on the basic or comparative qualifications of the applicant to be a broadcast licensee; and

(b) To determine whether Guy S. Erway has violated the provisions of Sections 1.514 and/or 1.65 of the Commission's Rules by failure to report the existence of his application, filed January 23, 1970, for an FM station in Montour Falls, New York, and subsequent changes in the status of that application; and, if so, to determine the effect of such violation on the applicant's basic or comparative qualifications to be a Commission licensee; and

12. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issues added herein SHALL BE on Sun Sand and Sea, Inc., and the burden of proof SHALL BE on Guy S. Erway.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Complaint by
RICHARD F. KELLY, JR., CONCERNING FAIRNESS DOCTRINE RE STATION WMAQ–TV, CHICAGO, ILL.

MARCH 22, 1973.

NATIONAL BROADCASTING CO., *Licensee of WMAQ–TV, RCA Building, 30 Rockefeller Plaza, New York, N.Y. 10020*

GENTLEMEN: This refers to letters of complaint against you by Richard F. Kelly, Jr., a candidate for the Illinois House of Representatives from the ninth district.

In a letter dated August 9, 1972 to Mr. Ed Planer, news director of WMAQ–TV, and in one dated October 20 to the Commission, Mr. Kelly contended that news commentator Walter Jacobson made several adverse comments about him and his supporters on two telecasts on July 19; that his supporters were accused of unfair and slanderous campaign practices; that Mr. Jacobson exhibited a document which he falsely claimed was circulated by Mr. Kelly's supporters during the primary election; that the public was left with the impression that he did not deserve their support; and that a controversial issue of public importance was involved and the fairness doctrine is therefore applicable. Mr. Kelly requested "equal time" to respond to these remarks.

In response to Mr. Kelly and in reply to a Commission inquiry, you stated that the telecast involved was a commentary—news analysis (not an editorial) which followed the regularly scheduled newscast; that the broadcast was so labeled "commentary"; that the Commission's personal attack rules would therefore not apply; that the commentary involved a discussion of the point that in this Presidential campaign year, the campaigns for some of the other offices were not regarded closely by voters and the result was that some of them focused only on one issue; that the election contest for the Illinois House of Representatives in the ninth district was an example of this because opponents of the incumbent representative focused their campaign on the issue of abortion alone; that Mr. Jacobson took no position on the issue of abortion; that no controversial issue was therefore involved; that no position was taken in favor of either of the candidates; that Mr. Kelly was never accused of being responsible for the literature referred to; and that if Mr. Kelly were to be provided with rebuttal time, a question would be presented as to whether his opponent would also be entitled to broadcast time to respond.

As you know, the fairness doctrine provides that if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting

views. The fairness doctrine does not require that "equal time" be afforded for each side, as Mr. Kelly requests, which would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting viewpoints in its overall programming.

You state that the thesis of the commentary was that "in a Presidential campaign year because other campaigns are ignored or obscured lesser-than-presidential candidates are able to play unusually rough and get away with it." On this basis, you state that no controversial issue was involved. However, the commentary not only gave an example of a campaign which focused only on one issue (abortion), but also addressed the issue of who should be elected to the Illinois House of Representatives from the ninth district. The commentary referred to the campaigns of the incumbent Leland Rayson and his opponent Richard Kelly. Rayson was described as having "won more public service awards than most politicians put together." Nevertheless, it was stated that, "he may not be going back to Springfield. because he has taken a strong stand in favor of changing abortion laws, which is just the stand to take these days if a candidate wants to be smeared." The example taken as a whole is favorable toward Leland Rayson while insinuating that "the people behind Rayson's opponent, Richard Kelly" were conducting a smear campaign centered on the issue of abortion. Thus, the commentary cannot be read without concluding that Rayson was a desirable candidate and Kelly was not. A controversial issue of public importance was therefore discussed.

Since the language used in the commentary presented one side of a controversial issue of public importance, you incurred an obligation to afford a reasonable opportunity for the presentation of contrasting views, and since you denied that a controversial issue of public importance was involved, it would appear that you did not afford such opportunity for contrasting views. As to your statement that if Mr. Kelly were to be provided with rebuttal time a question would be presented as to whether his opponent would also be entitled to broadcast time to respond, you could have easily permitted a spokesman in favor of Mr. Kelly's election.

Since this appears to have been an isolated instance of your failure to comply with the fairness doctrine, no further Commission action is being taken at this time. This letter will be placed in the station's file for future reference as warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

ARTHUR L. GINSBURG,
Acting Chief, Complaints and Compliance Division,
(For Chief, Broadcast Bureau).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Complaint by
IRVING H. GREENWALD, SPRING VALLEY, N.Y.
Concerning Fairness Doctrine Re Radio
Station WRKL, New York, N.Y.

MARCH 23, 1973.

MR. IRVING H. GREENWALD,
12 Manchester Drive,
Spring Valley, N.Y. 10977

DEAR MR. GREENWALD: This is in reply to your complaint against Radio Station WRKL, New York City, New York. We regret that we are just now able to respond to your letter, but the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once. Therefore it was necessary to postpone consideration of your complaint which normally we would have dealt with much earlier.

You state that WRKL broadcast a personal attack against you on the September 28, 1971 *Hot Line* program; that an unidentified woman called the *Hot Line* program and began to read a news release attacking your character, integrity and honesty; that the moderator allowed the unidentified woman to read some of the news release but interrupted her before she finished; that the moderator ". . . told the caller that he received the entire statement in a news release, but he had not put it on the air because it could be considered 'libelous and because it was going into the courts' "; that the moderator knew at the beginning of the call that the caller was going to read the news release but failed to terminate the conversation with a seven second delay mechanism until the caller had read the damaging statement; that on September 28 a related news release charging you with misconduct was broadcast throughout the afternoon on WRKL; and that during the time of the broadcast you were a candidate for town councilman. You state that on September 30, 1971 you sent a letter to WRKL requesting that they send you a tape of the attack and that on October 14, 1971 you sent a follow-up letter noting that the station had still not transmitted the tapes to you.

You further assert that you received a letter from Mr. Arthur Athens, moderator of the *Hot Line* program and news director of WRKL, on October 17, 1971 in which he enclosed a copy of a letter "purported" to have been sent you, bearing the date of October 7, 1971. You claim you did not receive any letter from WRKL until October 17, 1971. You note that the copy of the October 7 letter contained the fol-

lowing typewritten news release which was broadcast throughout the day on WRKL:

> The executive committee of the Citizens of Ramapo Civic Association reportedly has voted to replace Irving Greenwald as chairman for alleged misconduct. A civic association spokesman says Greenwald has been replaced by Neil Rosman in the chairmanship post. According to the spokesman, the association has retained legal counsel.

In reply to your complaint, WRKL states that it did broadcast the above message during its newscasts on September 28; that Mr. Greenwald was the subject of "considerable controversy" and that the station broadcast "considerable news reports" surrounding his candidacy; that as to the content of the press release, ". . . we do not feel it is a controversial issue of public importance, other than that extent of coverage given it on regular newcasts"; and that the newscast on which the press release was read is exempt from the Commission's personal attack rules. Licensee also included the following transcription of the call which you allege was a personal attack:

> ATHENS. Hello, Hot Line . . .
> CALLER. Art?
> ATHENS. Yes . . .
> CALLER. I have a press release in front of me that I thought might be of interest to your Hot Line viewers.
> ATHENS. O.K.
> CALLER. Listeners, I'm sorry . . .
> ATHENS. Viewers, you're right!
> CALLER. It would be dated the town of Ramapo, New York, September 27th. The executive committee of the Citizens of Ramapo Civic Association Inc., today announced the election of Neil Rothman as chairman of the civic association, succeeding Irving H. Greenwald, who has been dismissed as president and chairman for improper conduct . . .
> ATHENS. I'm going to stop you right there . . . that's as much of it as you can read. We have a copy of that and we will not run that on the air, it's going to be in court, at which time we will cover the story.
> (At that point caller's voice was cut from the air)

In further correspondence you state that WRKL failed to broadcast a "valid" press release which answered the attack on the *Hot Line* program and the subsequent news releases broadcast on the station concerning your candidacy, but rather read a press release about your candidacy which you claim was not a "bona fide" press release. You assert that WRKL did not give you proper news coverage in that it did not broadcast your press releases and did not cover the court case concerning the validation of your petition to the degree you thought proper.

The licensee in further correspondence states that you called WRKL on the day of the alleged attack and were informed that you could use the station's facilities to broadcast a reply; that you refused the offer; and that you appeared on the station two days after the alleged attack in connection with another incident but failed to discuss the citizens association affair. The licensee states:

> He did not refer in any way to the citizen association matter, although he had every opportunity to do so. We are of the view, therefore, that—assuming, solely for the sake of argument, there was a personal attack—we completely fulfilled our responsibilities to Mr. Greenwald.

WRKL also states that it had met its obligations under the fairness doctrine in presenting both sides of the civic association funds controversy.

You state in reply to the licensee's further correspondence that you were not offered time to reply on the day of the attack and that you never in fact appeared on the station to reply to the attack. You assert that your purported "appearance" on WRKL to which the licensee refers was nothing more than your press release being broadcast by the licensee.

The personal attack rule was established by the Commission to effectuate important aspects of the fairness doctrine. The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of contrasting views in its overall programming, which includes news programs, interviews, discussions, debates, speeches, and the like. The personal attack rule is set forth in Section 73.123(a) of the Commission's Rules and states as follows:

> When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

The licensee is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, whether there is a personal attack, and whether the group or person attacked is identified sufficiently in the context to come within the rules. The Commission's role is not to substitute its judgment for that of the licensee on these matters, but rather to determine whether the licensee can be said to have acted reasonably and in good faith.

It appears from the information provided the Commission that the alleged attack did not take place during a discussion of a controversial issue of public importance. While a reference was made to your dismissal, there was no real opportunity for a discussion of a controversial issue of public importance, because the moderator quickly terminated the call before any substantive discussion could take place. In *In the Matter of Amendment of Part 73*, 8 F.C.C. 2d 721, at 725 (1967), the Commission stated:

> Several of the comments in this proceeding indicate the mistaken impression that an attack on a specific person or group constitutes, itself, a controversial issue of public importance requiring the invocation of the Fairness Doctrine. This misconceives the principle, based on the right of the public to be informed as to the vital issues of the day, which requires that an attack must occur within the context of a *discussion* of a controversial issue of public importance in order to invoke the personal attack principle. The use of broadcast facilities for the airing of mere private disputes and attacks would raise serious public interest issues, but such issues are not the focus of the Fairness Doctrine. (emphasis added)

Thus, mere reference to your dismissal, which was immediately cut off by the station, did not constitute a discussion of a controversial issue of public importance. Therefore, since a personal attack within the meaning of the Commission's rules was not broadcast, the licensee did not have the obligation to forward tapes or an accurate summary of the conversation to you, nor offer you time to reply. As to the broadcast of the press release during a newscast, such broadcasts are exempt from the personal attack rules, although the fairness doctrine is applicable. In this connection, it is noted that the licensee states that it broadcast your press releases and reported the civic association story during its newscasts. You allege that the coverage of this matter was inaccurate and unfair; however, you do not present sufficient information to show that the station in its overall programming failed to meet its obligations under the fairness doctrine in covering the controversy.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
(For Chief, Broadcast Bureau).

F.C.C. 73-367

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (SALEM, ARK.; BRECKENRIDGE, COLO.; BERNE, IND.; AND ST. MARYS, OHIO)	Docket No. 19535 RM-1922, RM-1938, RM-1961, RM-2021, RM-2033

REPORT AND ORDER

(Adopted April 4, 1973; Released April 6, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it for consideration the three unrelated FM channel assignment proposals for a first FM assignment to Salem, Arkansas (RM-1922), Breckenridge, Colorado (RM-1938), and Berne, Indiana (RM-1961), upon which Notice of Proposed Rule Making was released herein on July 3, 1972 (FCC 72-571, 37 Fed. Reg. 13643). We also have before us two other FM assignment proposals, one (RM-2021) of which conflicts with the Breckenridge proposal, and the other (RM-2033), with the Berne proposal, which were accepted for consideration as counterproposals since they were advanced in rule making petitions which were filed during the time for initial comments herein.[1] The channel assignments proposed and the respective petitioners are as follows:

RM-1922—Channel 240A to Salem, Arkansas (Ronald E. Plumlee).

RM-1938—Channel 272A to Breckenridge, Colorado (Edward J. Patrick).

RM-2021 (Counterproposal in re RM-1938)—Class C Channel 270 to Breckenridge by substituting Class C Channel 268 for occupied Channel 270 at Colorado Springs, Colorado (KRYT-FM) (Irving M. Seidner and Robin Theobald).

RM-1961—Channel 228A to Berne, Indiana (South Adams Broadcasting Company).

RM-2033—(Counterproposal in re RM-1961)—Channel 228A to St. Marys, Ohio (Robert J. Walton).

2. Before taking up the proposals on the merits, there are two petitions and related pleadings and reply submissions received on the Brenkenridge and Berne-St. Marys proposals after the expiration date

[1] See Public Notice, issued August 4, 1972 (Report No. 825, Mimeo. 87422) for *RM-2021*, and Public Notice, issued August 21, 1972 (Report No. 827, Mimeo. 87890) for *RM-2033*.

for public comment on them to be disposed of.[2] Upon consideration, we have decided both petitions [2 (a) and (c)], which seek authority to have this proceeding opened up for the receipt of additional comments on the proposals and counterproposals for Breckenridge and Berne-St. Marys, will be denied. The motions to strike [2 (f) and (h)] the unauthorized, untimely reply submissions of Robert J. Walton Broadcasting [2 (e) and (g)] will also be granted. Our reason follow.

3. Considering the time initially provided for comments and reply comments on the proposals and counterproposals in the Notice,[3] and the additional time authorized for comments on the Breckenridge and Berne-St. Marys proposals,[4] we think that reasonable and ample time was given to provide opportunity for all parties, including the subject petitioners (the proponents of the Breckenridge and St. Marys counterproposals), to make their views known in timely-filed comments and reply comments on the conflicting proposals. It also appears that these petitioners advance no argument or circumstances which would constitute good cause for their failure to submit any comments which they cared to make on the proposals involved prior to the expiration dates for reply filings on them. Further, we are satisfied that the timely-filed submissions of these petitioners are sufficient to apprise us of their proposals and their positions on the conflicting proposals. In fairness to all parties filing timely comments, and in the interest of the orderly administration and dispatch of the Commission's business (which has added importance in FM assignment cases because a substantial backlog exists), we believe that in the absence of a showing of extraordinary circumstances, FM rulemaking proceedings should not be reopened for the receipt of additional comments after the time limit for public comment in them expires. No such showing has been made to warrant such action in this proceeding.

4. *Salem, Arkansas* (*RM–1922*). The petitioner, Ronald E. Plumlee, proposes the assignment of FM Channel 240A to Salem, Arkansas (population 1,277)[5] for a first FM assignment for which he can apply.

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[2] In *RM–1938—RM–2021*, these include:
(a) Request for extension of time to file opposition to reply comments (filed October 6, 1972, by Irving M. Seidner and Robin Theobald);
(b) Opposition to request for extension of time to file unauthorized pleading (filed October 10, 1972, by Edward J. Patrick, with William S. Cook, the Colorado Springs KRYT–FM licensee, joining in opposition).
In *RM–1961—RM–2033*, they include:
(c) Petition for study time (filed November 8, 1972, by Robert J. Walton, Walton Broadcasting);
(d) Opposition of South Adams to petition for study time (filed November 13, 1972, by South Adams Broadcasting Company);
(e) Proponent's letter of reply for St. Marys, Ohio (filed December 11, 1972, by Robert J. Walton, Walton Broadcasting);
(f) Motion to strike "Proponent's letter of reply for St. Marys, Ohio" (filed January 10, 1973, by South Adams Broadcasting Company);
(g) Correction and reply comments (filed February 12, 1973, by Robert J. Walton); and
(h) Motion to strike Walton's "Correction and reply comments" (filed February 15, 1973, by South Adams Broadcasting Company).

[3] In the Notice issued herein, the due dates specified were August 14, 1972, for comments and August 24, 1972, for reply comments on all the proposals (including reply comments on any counterproposals).

[4] In *RM–1938—RM–2021*, the due date for filing reply comments was extented from August 24, 1972, to and including September 25, 1972, upon request of the petitioner in RM–1938. In *RM–1961—RM–2033*, the due date for comments was extended from August 14, 1972 to August 21, 1972, and for reply comments from August 24, 1972, to September 1, 1972, upon request of the petitioner in RM–1961. The due date for reply comments on these proposals was later again extended from September 1, 1972, to October 2, 1972, at the request of the petitioner in RM–1961.

[5] The population figures, as well as those hereinafter given, are from the 1970 U.S. Census reports unless otherwise specified.

Salem is centrally located in Fulton County (population 7,699), of which it is the seat, in north-central Arkansas. The only aural broadcast station in Fulton County is FM Station KAMS, which operates on Channel 236 at Mammoth Spring, approximately 18 miles northeast of Salem. No other FM channels are assigned in Fulton County. If the proposed Salem assignment is made, the petitioner states in his supporting comments that he will immediately apply for its use to provide Salem and neighboring communities with a first local service.

5. A Salem Channel 240A assignment would conform with the minimum mileage separation requirements of the rules without requiring any other changes in FM assignments, and it would also have no adverse preclusionary effect upon new assignments elsewhere. It further appears from the information furnished by the petitioner, and which was discussed adequately in the notice issued on his proposal, that Salem is a growing commercial center for Fulton County and a number of small communities in the surrounding area without local aural broadcast service; that around 11,940 persons in the Salem area, including those residing in the Arkansas communities of Viola, Lake Norfolk, Melbourne, Calico Rock, Oxford, Horseshoe Bend, Hardy and Ash Flat, and other persons in several small communities in Missouri (Moody, South Fork, and Lanton, and a portion of Howell County) could be served by a Class A FM station at Salem; and that there is reason for belief that the Salem area has need for a first local broadcast service and that it could contribute to the economic and overall development of this north-central area of Arkansas. These considerations convince us that it is in the public interest to adopt this unopposed proposal to assign Channel 240A to Salem.

6. *Breckenridge, Colorado (RM–1938—RM–2021).* The conflicting proposals here involved are for the assignment of either Channel 272A or Class C Channel 270 to Breckenridge. The Class A proposal, upon which comments were invited in the Notice issued herein, is advanced by Edward J. Patrick, a prospective applicant for the proposed Channel 272A assignment, who filed comments and reply comments supporting his proposal and in opposition to the Class C proposal for Breckenridge. The Class C Channel 270 proposal, which would also require changing the FM assignment occupied by Station KRYT–FM at Colorado Springs, Colorado, from Channel 270 to Class C Channel 268, is advanced by Irving M. Seidner and Robin Theobald (Seidner) in a petition filed on July 26, 1972. As has been pointed out, their proposal was accepted for consideration herein as a counterproposal to the Channel 272A proposal for Breckenridge. In their petition, the Seidner petitioners state that they will immediately apply for use of the proposed Class C channel if it is assigned to Breckenridge, emphasizing, however, that they do not waive any rights to file for whatever class FM channel may be assigned to the community. The engineering statement accompanying the Seidner petition also informs that they have advised the licensee of Station KRYT–FM, Colorado Springs, of their willingness to pay for any reasonable expense incurred in the required transfer of frequencies for Station KRYT–FM to permit the assignment and use of Channel 270 at Breckenridge.

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7. The Colorado Springs Channel 270 licensee, William S. Cook, advises in reply comments herein that he opposes the Seidner Class C proposal. He is of the view that to require his Colorado Springs station (KRYT–FM) to change from operation on Channel 270 to Channel 268 would have adverse effects upon the station's operations, not outweighed, in his opinion, by any demonstrated need of Breckenridge for a Class C assignment. Among the resultant detrimental effects which he mentions are undue hardship on Station KRYT–FM in terms of the time, effort and expense the changeover would necessitate to educate the public of the change in frequency and dial position for receiving the station; the loss to Station KRYT–FM of all the past time, effort and money spent on promoting the station, as presently located on the FM receiver dial, as well as the money invested in billboard and other advertising and in stationery; and the estimated costs—upward of $5,000—to adjust the SCA receivers of subscribers to the background music service provided by Station KRYT–FM in the Colorado Springs area. The most troublesome adverse effect, he claims, would be the time, effort and expense involved in retuning the station's antenna which is designed for use on one frequency.

8. Breckenridge, with a 1970 population of 548, is located in the Rocky Mountains in Summit County (1970 population, 2,665), approximately 60 miles west of Denver, Colorado. The only other communities of any size in Summit County are Silverthorne (1970 population, 400), approximately 10 miles north of Breckenridge; Dillon (1970 population, 182), approximately 8 miles north of Breckenridge; and Frisco (1970 population, 471), approximately 7 miles southwest of Breckenridge. The proponents estimate that the present permanent population of Breckenridge is now between 1,200 and 1,300 persons. Data furnished by Seidner also indicate that the present permanent population of Silverthorne is 606 persons; of Dillon, 338 persons; of Frisco, 726 persons, and of Summit County, 3,216 persons. Because of the year-round recreational activities and facilities in Summit County and the Breckenridge area, which the Seidner proponents point out includes three major ski developments, areas for cross country skiing and snowmobiling for six months of the year, and boating, fishing, camping, horseback riding, mountain climbing and other activities for other times of the year, this area has a large tourist population also which, according to Patrick, increases the population of Breckenridge at times to approximately 6,500.

9. These FM proponents anticipate increased and accelerated population and economic growth in this area in the near future in view of a number of indices, including the construction scheduled in the county, highway expansion plans, the opening of a new tunnel, and projections in assessed value of property in the county, in retail tax revenues, retail sales and population. It is noted that Patrick states that a preliminary master plan for Breckenridge projects a 10-year population figure of between 50 to 60 thousand persons and that the Seidner proponents anticipate that the total permanent population of Summit County will increase to over 50,000 within this decade. The proponents also point out that retail sales in Summit County in 1971

totalled over 14 million dollars and that estimates of 1972 retail sales for the county are projected at a total of more than 17 million dollars.[6]

10. Breckenridge and Summit County are presently without an FM assignment or aural outlet. The nearest AM broadcast station (KBRR) is located in Leadville, approximately 21 miles south of Breckenridge. Leadville also has an unused FM Class A assignment (228A). Because Mount Lincoln, with a height of over 14,000 feet above mean sea level, bisects the path from Breckenridge to Leadville, Patrick states that the Leadville AM station is not received in Breckenridge. The Seidner proponents state that some aural service is received in Summit County from two Denver stations (KOA–AM and KHOW–FM) but that quality reception of them is sporadic. Consequently, some towns in the county, they aver, use boosters to improve reception. There are also local Cable TV systems in Breckenridge and Frisco (the Frisco system also serves Silverthorne and Dillon) which provide subscribers with service from Denver and Sterling, Colo., and Cheyenne, Wyo. television stations. In the near future, we expect that this area will be able to receive FM service from a new station operating on the Vail, Colorado, Class C Channel 284 assignment, for which two applications are on file. Class C Channel 284 was assigned to Vail, some 20 miles northwest of Breckenridge, in 1971, in lieu of the Class A assignment also proposed, not only to meet the need of Vail (1970 population, 484) for a first FM local service but also to serve a large number of other small communities (including Breckenridge and others in Summit County) and the ski and recreational areas in this part of Colorado which, because of the mountainous terrain, are inadequately served by existing stations.[7] To insure that the Vail assignment will provide the service upon which it was premised, in making the assignment, in the FM table of assignments we specifically conditioned its use by a station operating with power of at least 75 kw and antenna height of at least 1,000 feet above average terrain or equivalent.

11. It appears that the projections for growth of Breckenridge and Summit County as a whole which these parties have furnished may be somewhat optimistic and unrealistic. Nevertheless, their showings are sufficient to convince us that this is a growing area which has considerable potential for further growth economically and in population and that a first local FM outlet at Breckenridge would serve a need there and in Summit County for a first local aural broadcast service and could, as claimed, aid in development of this area. We therefore believe it in the public interest to provide Breckenridge with an FM assignment. Upon consideration, we have also decided that, on balance, the case for assigning Channel 272A to Breckenridge is stronger than that for the proposed Class C Channel 270 assignment and should be adopted.

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[6] It is noted, however, that the 1972 edition of the Editors & Publishers Market Guide, at page 59, reports that estimated retail sales in Summit County, Colorado, totalled $6,532,000 in 1971, and that in 1972, these sales increased to a total of $6,651,000. The same source also reports that Summit County had an estimated population of 2,820 in 1972, an increase of but 155 persons over that reported by the U.S. Census in 1970.

[7] See Second Report and Order, Vail, Colorado, *et al*, adopted November 11, 1971, Docket No. 19160, 32 F.C.C. 2d 308.

12. In the first place, as Patrick points out, under our FM assignment policies, wide-coverage Class C channels are designed for assignment to large cities and metropolitan areas for use, and the most limited-coverage Class A channels are designed for assignment to relatively small communities, such as Breckenridge, for use. In making Class C assignments, we normally adhere to this policy unless justifiable reason can be shown that a Class C assignment to a small community is nevertheless warranted for such reasons as that no Class A channel is available which could be assigned to meet a need for local FM service or that, if available, the local situation is such that it is unlikely that a Class A assignment would be put to use, and that the wide-coverage Class C channel is needed to provide service to unserved areas which could not be served by a Class A facility. No such reasons or others, in our view, warrant a Class C assignment to Breckenridge. This record evidences that a Class A channel (proposed Channel 272A) is technically feasible for a Breckenridge assignment; that it is likely that a Class A channel would be put to use for a local station at Breckenridge, if assigned; and that, in addition to Breckenridge, all communities of any size within Summit County (Silverthorne, Dillon and Frisco) could be served by a Breckenridge Class A station. Further, the record does not evidence that significantly more people would receive a needed first or second FM service if the proposed Class C channel rather than Channel 272A is assigned.

13. While the Seidner Class C proponents claim that a Breckenridge Class C station could provide a first service to 1,338 square miles and a second service to 1,310 square miles, whereas a Breckenridge Class A station would provide a first service to but 188 square miles and a second service to but 715 square miles, they do not demonstrate the basis for the claimed greater Class C coverage. Their engineering showing bases the Class C coverage claims on a Class C station which operates with 100 kilowatts power, with an antenna located on a 200-foot tower, but it provides no data on the antenna height above average terrain or the profiles of the terrain in support of the location of the alleged 60 dBu contour, which is rectangular in shape. Consequently, the Seidner showing as to possible areas of first and second service that a Breckenridge Class C station would obtain over a Breckenridge Class A station cannot be evaluated and accepted. Further, since no population data were submitted, it is not known whether any significant number of people reside in such areas, which appear to be largely uninhabited.

14. It also appears that, with the activation of the Class C Channel 284 assignment at Vail, a Breckenridge Class C station would not serve any unserved area in Summit County since all of the county would be within the 1 mv/m contour of any Vail Class C station, operating with the facilities specifically required by the rules. Further, a Breckenridge Class C station would not serve a significantly greater population in Summit County than a Class A station since all communities and population areas of any size in the county are within 15 miles of Breckenridge and would be served by a Class A station.

These considerations convince us that justification for the proposed Breckenridge Class C assignment cannot be found on the basis of any significant advantage it would have over the proposed Class A assignment in meeting the needs of the community and Summit County for a local outlet and service.

15. Another consideration is that, while the proposed Class A channel can be assigned to Breckenridge without disturbing any existing station or assignment, and other available Class A channels could also be assigned to communities in the area without disturbing occupied or unoccupied assignments, neither the proposed Breckenridge Class C assignment, nor another Class C channel, could be assigned to this area without doing so. In addition, the proposed Class C channel sought for Breckenridge in this case is opposed by the Colorado Springs licensee who would be required to change over to operation on another frequency if the Breckenridge Class C assignment were to be made. Absent a strong showing of need, we do not consider it in the public interest to provide new assignments to communities which require changes in existing occupied assignments in other communities, particularly when, as here, opposition is raised to the proposal by the affected station or community. That showing has not been made here. We also think that there is worth in Patrick's claim that the assignment of a second wide-coverage Class C channel to another small community in this Colorado area would be likely to hamper the future development of Class A stations in the area and that a Class A assignment to Breckenridge would have more potential for furthering the development of other local Class A stations and services in this area which, doubtless, will be needed if the area develops and grows as the petitioners anticipate.

16. *Berne, Indiana—St. Marys, Ohio* (*RM–1961—RM–2033*). These requests involve conflicting proposals for the assignment of Channel 228A for a first FM assignment to either Berne, Indiana, or St. Marys, Ohio. The Berne Channel 228A proposal, upon which comments were invited in this docket, is advanced by South Adams Broadcasting Company (South Adams), an Indiana partnership, a prospective applicant for the proposed assignment. The St. Marys Channel 228A proposal, which, as before mentioned, was consolidated into this proceeding as a counterproposal to the Berne proposal after the issuance of the rule making notice herein and during the time provided for initial comments on the proposal, is advanced by Robert J. Walton (Walton) in a petition filed August 16, 1972. It advises of his interest in establishing an FM station at St. Marys and of his intent to possibly organize an Ohio corporation or form a partnership to pursue this objective if the proposed assignment is made. Timely comments on the Berne proposal were filed by South Adams which incorporate the supporting argument contained in its prior petition for rule making on the proposal and affirm that it will apply for use of Channel 228A at Berne, if assigned. Timely reply comments in support of the Berne proposal and in opposition to the conflicting St. Marys proposal were also filed by South Adams and by Johnston Broadcasting, Inc., licensee of Radio Stations WCSM–AM and WCSM–FM, Celina,

Ohio. The untimely reply comments mentioned in footnote 2, *supra*, were also received from Walton on the proposals.[8]

17. Berne (population 2, 988) is located in Adams County (population 26,871) in east-central Indiana, approximately 12 miles south of Decatur, the county seat, and approximately 30 miles west of St. Marys, Ohio. While Berne is without an FM assignment or local aural outlet, there is one FM assignment in Adams County, Channel 224A, occupied by Station WADM–FM at Decatur where there is also an AM broadcast station (WADM). South Adams avers that Berne receives no 100% 60 dBu or better service from any FM station at present and that the only FM station providing even partial service to Berne is Station WMEE–FM, which operates on Channel 247 at Fort Wayne, Indiana, about 32 miles northeast of Berne. South Adams states that about 40 percent of the city receives 60 dBu or better service from Station WMEE–FM, computed on the basis of its assigned facilities, and assuming uniform elevation for the ground path between its site and Berne. South Adams also points out that the proposed St. Marys Channel 228A assignment would not permit use of the channel by a station at a location which would include Berne within its 60 dBu contour.

18. St. Marys (population, 7,699), is located in west-central Ohio, in Auglaize County (population, 38,602), of which it is the largest city, approximately 10 miles west of Wapakoneta, the seat of Auglaize County, and approximately 22 miles southwest of Lima, Ohio, There is no FM assignment or aural outlet in St. Marys and but one aural outlet in Auglaize County, Station WERM, which operates on FM Channel 221A at Wapakoneta, the only FM assignment in the county. According to South Adams, the Wapakoneta FM station (WERM) provides service of 70 dBu signal strength to St. Marys, noting also that it has its transmitter located closer to St. Marys than to Wapakoneta. South Adams also states that Station WLIO–FM (Channel 271), Lima, Ohio, provides St. Marys with FM service of 60 dBu or better. It also points out that there are two FM stations at Celina (WCSM–FM, Channel 244A; WMER, Channel 232A), approximately 10 miles west of St. Marys, which, if they were to operate with maximum facilities, could also provide all of St. Marys with service of 60 dBu signal strength. South Adams avers, however, that the Celina FM stations, even if they were to operate with maximum facilities, would not place a 60 dBu signal over Berne.

19. Johnston Broadcasting, the licensee of Station WCSM–FM and WCSM–AM at Celina, which opposes the proposed St. Marys Channel 228A assignment proposal in its comments herein, states that both its Celina FM and AM stations provide primary service to St. Marys, provide it with actual program service, maintain a remote studio in St. Marys, employ a newsman to cover St. Marys and Au-

[8] In addition, telegrams in support of the St. Marys Channel 228A proposal were received from the Mayor of St. Marys and the St. Marys Chamber of Commerce, duplicates of which, in letter form, also accompanied the Walton petition. South Adams also submitted with its reply comments supporting letters for its Berne Channel 228A proposal from officials of the Berne First Mennonite Church and the First Missionary Church, the Berne Chamber of Commerce, the South Adams Schools, and CTS of Berne, Inc., a local manufacturer. Previously, as the Notice herein noted, letters supporting the Berne proposal were received from the Mayor of Berne and Swiss Village, Inc., which provides a home and care for the elderly in the Berne area.

glaize County, and derive substantial revenues from St. Marys and Auglaize County. Johnston gives a number of examples of the type of service it provides to St. Marys to demonstrate that it provides service to meet almost every local need and to make it clear that St. Marys is far from a deprived community in terms of radio coverage of local needs. It submits letters from Auglaize County and St. Marys' officials and organizations which attest favorably to the service received from its Celina station (WCSM). Johnston further contends that a new FM station at St. Marys would cause such a reduction in WCSM's revenues that a cutback in its services would be necessary.

20. Because a separation of 65 miles is required, Channel 228A could not be assigned to both Berne and St. Marys, the distance between these communities being only about 30 miles. However, since there is an area running south of Berne and north of St. Marys where Channel 228A can be used for either a Berne or St. Marys station in conformance with all separation requirements and without requiring any changes in existing stations and assignments, the channel is technically feasible for assignment to either Berne or St. Marys for use in this area. The assignment of Channel 228A to either community could not be expected to have an adverse preclusionary effect upon future assignments since the affected channels are already limited by existing stations or assignments.

21. It appears that there is no other available FM channel which, in addition to Channel 228A, could be assigned to the Berne-St. Marys areas to make it possible to provide both communities with an FM assignment without requiring changes in existing FM assignments. However, South Adams, in its reply comments, suggests that St. Marys could be provided with an FM assignment other than Channel 228A by interchanging the occupied Channel 288A assignment at Auburn, Indiana (WIFF–FM) with the unoccupied Channel 280A assignment at Fort Wayne, Indiana, as proposed in the pending petition of the Auburn station's licensee in RM–1960, since it would then be technically feasible to assign Channel 280A to St. Marys. This proposal for St. Marys is, of course, untimely advanced for consideration herein, since under the "cut-off" procedure specified in the rule making Notice herein and which is usual procedure and, with few exceptions, strictly adhered to in these FM assignment proceedings, counterproposals advanced in reply comments are not considered. In any case, it appears highly questionable that the suggested 280A assignment for St. Marys would warrant adoption in view of the severe limitations which other assignments would impose on use of the channel at a site meeting separation requirements.

22. Both the Berne and St. Marys Channel 228A proponents have furnished ample information concerning the characteristics of these communities and the surrounding area to convince us that the assignment of Channel 228A to either Berne or St. Marys for a local outlet would serve a need and hold benefits for the residents of both areas. We must necessarily, for technical reasons, however, choose between these communities for the assignment. Except for the fact that St. Marys (population, 7,699) is a larger community than Berne (population 2,988), other important factors to be weighed in making

the choice, appear to be nearly equal in value. Neither Berne nor St. Marys has a local broadcast outlet or is a county seat, and both counties in which they are located have but one FM assignment, both of which are in use. However, from the standpoint of available FM services, these proposals do not equate in value. The study made by the staff on the basis of the *Goldsboro-Roanoke Rapids* criteria [9] indicates that, although a Berne Channel 228A station would not provide a first FM service to any area, it would provide a second FM service to about 20 percent of the area within its 1 mv/m contour. On the other hand, a St. Marys Channel 228A station would provide neither a first nor a second service to any portion of the area within its 1 mv/m contour. Since it appears that the use of Channel 228A in this part of the country is limited to the area between Berne and St. Marys, we therefore believe that it would be more in the public interest and result in a more efficient use of radio frequencies to assign Channel 228A to the community where it could not only meet a need for a first local outlet but provide a second FM service to the area now limited to one service. We, therefore, are assigning Channel 228A to Berne.

23. In view of the foregoing, and pursuant to the authority contained in Sections 4(i), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective May 17, 1973, the FM Table of Assignments, Section 73.202(b) of the Rules, IS AMENDED to read as follows for the cities listed below:

City:	*Channel No.*
Salem, Ark	240A
Breckenridge, Colo	272A
Berne, Ind	228A

24. IT IS FURTHER ORDERED, That the petition (RM–2021) of Irving M. Seidner and Robin Theobald for assignment of Class C Channel 270 to Breckenridge, Colorado IS DENIED.

25. IT IS FURTHER ORDERED, That the petition (RM–2033) of Robert J. Walton for the assignment of Channel 228A to St. Marys, Ohio, IS DENIED.

26. IT IS FURTHER ORDERED, That the request for extension of time to file an opposition to reply comments, filed by Irving M. Seidner and Robin Theobald in RM–1938, RM–2021 IS DENIED.

27. IT IS FURTHER ORDERED, That the petition for study time filed by Robert J. Walton in RM–1961, RM–2033 IS DENIED.

28. IT IS FURTHER ORDERED, That the motions to strike the untimely reply comments submitted by Robert J. Walton, filed by South Adams Broadcasting Company in RM–1961, RM–2033, ARE GRANTED.

29. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[9] See In re *Roanoke Rapids and Goldsboro, N.C.*, 9 F.C.C. 2d 672 (1967).

F.C.C. 73R–105

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INDUSTRIAL BUSINESS CORP., OGALLALA, NEBR. OGALLALA BROADCASTING CO., INC., OGALLALA, NEBR. For Construction Permits	Docket No. 19559 File No. BPH–7317 Docket No. 19560 File No. BPH–7364

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. This proceeding, involving the mutually exclusive applications of Industrial Business Corporation (Industrial) and Ogallala Broadcasting Company, Inc. (OBC) for a new FM broadcast station in Ogallala, Nebraska, was designated for hearing on various issues by Commission Order, FCC 72–667, released August 2, 1972. Now before the Review Board is a petition to enlarge issues, filed November 7, 1972, by OBC, seeking the addition of a *Suburban* issue against Industrial.[1]

2. OBC acknowledges that its petition is untimely, but maintains that good cause exists for its acceptance. In support, OBC contends that the Decision of the Review Board in *Childress Broadcasting Corporation of West Jefferson* (*WKSK*), 37 FCC 2d 766, 25 RR 2d 711, released October 27, 1972, is "the first one on the point decided therein" and bears upon the instant proceeding.[2] OBC argues that Industrial's community survey does not meet the requirements of *Childress* because the survey was not conducted and supervised by the proper persons. According to OBC's interpretation, *Childress* hold that the "mere appellation of a community survey interviewer as a principal in the applicant is not automatically sufficient to comply with the provisions of the *Primer*." [3] Petitioner points out that the Industrial application states that its community surveys were conducted by un-

[1] Also before the Review Board are: (a) the Broadcast Bureau's opposition, filed November 22, 1972; (b) Industrial's opposition, filed November 24, 1972; and (c) OBC's reply and a supplement thereto, filed December 6 and 14, 1972, respectively.

[2] In *Childress*, the Board held, among other things, that the person who conducted the community survey for one of the applicants was not a principal and had been designated an officer and director of the applicant only for the purposes of complying with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971), without being vested with any actual or proposed authority within the corporation. It was also held that while ordinarily it could be assumed that one who is an officer or director of a corporate applicant holds appropriate responsibility to conduct a survey, such nominal designation would not comport with the *Primer* requirements.

[3] The *Primer* requires that applicants utilize principals or prospective or actual management-level employees when conducting surveys of community leaders. 27 FCC 2d at 663, 664, 21 RR 2d at 1521, 1522.

named principals of the applicant and Richard Roeser. Roeser was, at one time, the individual applicant in what became the Industrial application, but is no longer a principal; he is the station's proposed program director. In OBC's opinion, the statement that "principals" conducted interviews is too vague to comply with the *Primer* and Roeser does not meet the requirements of *Childress* because he is not an officer, director or stockholder of the applicant.

3. In opposition, Industrial argues that none of the facts in *Childress* are present in regard to Industrial's application. However, in order to remove any doubt that it has complied with the *Primer*, Industrial states that it filed a petition for leave to amend its application on November 24, 1972, in which it furnishes details of its community needs survey, including the names of the principals who participated in the surveys and the extent to which they participated.[4] The Broadcast Bureau also opposes the petition claiming that "none of the factors relied upon by the Board in *Childress* are present in the instant case." OBC argues in its reply that, while Industrial has apparently met the "technical requirements" of the *Primer*, several "serious questions" remain concerning Industrial's survey efforts, alleging among other things, that Industrial interviewed some of the same community leaders and general public twice in the course of its community surveys, and, that some of the people interviewed were associated with principals of Industrial.

4. The Review Board will not add a *Suburban* issue against Industrial. First, OBC's petition was filed well after the expiration of the time limitations set forth in Section 1.229(b) of the Rules, and petitioner has not adequately demonstrated good cause for the delay.[5] The requirement that a principal, management-level employee or prospective management-level employee be utilized in the conduct of a broadcast applicant's community survey was clearly stated in the *Primer*,[6] which was released well before the instant proceeding was designed for hearing. In fact, the Board in March, 1972, added a *Suburban* issue against an applicant for, among other reasons, apparently failing to comply with this very requirement. See *WPIX, Inc.* (*WPIX*), 34 FCC 2d 419, 24 RR 2d 59 (1972), review denied FCC 72–616, released July 12, 1972. Second, petitioner concedes in its reply that Industrial has complied with what it calls the "technical requirements" of the *Primer*. We agree and therefore will not add an issue. In contrast to the facts in *Childress* (see note 2, *supra*), Industrial's use of Roeser to conduct its community survey, does comport with the requirements of the *Primer*. Roeser's role as program director of Industrial's proposed station was clearly stated in an amendment to its application filed in August, 1971.[7] As proposed

[4] The petition for leave to amend was granted by Order of the Administrative Law Judge, FCC 72M–1532, released December 13, 1972.

[5] Compare *Arkansas Television Co.*, 10 RR 534 (1954), which is mistakenly relied upon by OBC. In *Arkansas*, the Commission determined that good cause existed for accepting an untimely petition for enlargement of issues when a decision of controlling import to the proceeding was raised subsequent to designation but prior to the commencement of the hearing.

[6] See note 3, *supra*.

[7] The August 2, 1971, amendment contained the following statement in response to Section IV–A, paragraph 27:
Richard A. Roeser will be employed full-time as Program Director of the station. He will carry out the day-to-day programming under the direction and supervision of the General Manager and the officers and Directors of OBC.

program director with the responsibility of carrying out the day-to-day programming of the station, Roeser could correctly be characterized as a prospective management-level employee. Compare *WPIX, Inc.* (*WPIX*), *supra.* Furthermore, the surveys of community leaders which were not conducted by Roeser were conducted by principals of Industrial whose participation in this regard has been adequately demonstrated by the applicant in the recent amendment to its application. See note 4, *supra.*[8]

5. ACCORDINGLY, IT IS ORDERED, That the petition to enlarge issues filed November 7, 1972, by Ogallala Broadcasting Company, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[8] The so-called "serious questions" concerning Industrial's survey efforts which OBC refers to in its reply pleading are completely lacking in substance. The alleged associations between some persons interviewed and principals of Industrial are tenuous, at best, and any duplication of persons interviewed is so insubstantial as not to detract from the overall efficacy of Industrial's surveys.

F.C.C. 73-369

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF KMIN, INC., LICENSEE OF RADIO STATION KMIN, GRANTS, N. MEX.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted April 4, 1973; Released April 6, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture dated November 24, 1971, addressed to KMIN, Inc., licensee of Radio Station KMIN, Grants, New Mexico, and (2) licensee's response of December 17, 1971 to the Notice of Apparent Liability.

2. The Notice of Apparent Liability in this proceeding indicated that the licensee was subject to apparent liability for forfeiture in the amount of $2,000 for willful or repeated violation of Section 73.87 of the Commission's Rules and failure to observe the terms of the station authorization, in that station KMIN began operation at 6:00 a.m., Mountain Standard Time (MST), from February 1 through February 5, 1971 and on March 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12, 1971 whereas the station license authorized operation to begin at 7:00 a.m. MST in February and 6:30 a.m. MST in March.

3. In response to the Notice of Apparent Liability the licensee, in substance, states that its vice president and general manager had been led to believe, beginning in 1962, by the management of the former licensee that an authorization existed for operation commencing at 6:00 a.m., and that this belief was held at the time of the inspection and until Washington counsel later informed the licensee that no such authorization existed. The licensee requests remission or reduction of the forfeiture.

4. We find that such unauthorized operation was repeated, thus we need not make an additional determination as to willfulness. *Paul A. Stewart*, FCC 63-411, 25 RR 375. It appears that licensee was relying upon the former Rules of the Commission governing presunrise operation which were superseded by new and amended Rules of the Commission which became effective in 1967.[1] However, licensees will not be excused from compliance with the Rules by reason of misunderstanding or mistake. *Hanson R. Carter*, 23 FCC 2d 511 (1970), 19 RR

[1] Docket 14419, amending Section 73.87 and adopting Section 73.99 of the Commission's Rules, effective August 15, 1967.

2d 308. Licensees are required to be aware of and comply with all Commission requirements. Therefore, we are not persuaded to remit or reduce the forfeiture.

5. In view of the foregoing, IT IS ORDERED, That KMIN, Inc., licensee of Radio Station KMIN, Grants, New Mexico, FORFEIT to the United States the sum of two thousand dollars ($2,000) for repeated failure to abide by Section 73.87 of the Commission's Rules and failure to observe the terms of the station authorization. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days from the date of receipt of this Memorandum Opinion and Order.

6. IT IS ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested, to KMIN, Inc., licensee of Radio Station KMIN, Grants, New Mexico.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–356

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by
MADELEINE S. LARGE, WEST HARTFORD, CONN.
For Review of Staff Letter Concerning
Responsibility To Review Records Before Broadcast

MARCH 29, 1973.

MRS. MADELEINE S. LARGE,
5 Orchard Road,
West Hartford, Conn. 06117

DEAR MRS. LARGE: This will acknowledge your application for review by the Commission of staff letter dated June 23, 1972, involving the matter of licensee responsibility to review records before their broadcast. (Public Notice 71–205, dated March 5, 1971.)

The contentions in your complaint and petition for rescission were recently considered by the Court of Appeals for the District of Columbia Circuit in *Yale Broadcasting Company* v. *F.C.C.*, #71–1780, decided 5 January 1973. The *Yale* case upheld our Public Notice and Order and concluded "that the stated purpose and the actual result of the Commission's Notice and Order was to remind the industry of a pre-existing duty." *Supra* Slip Op. at 11.

The Court also stated:

> "Far from constituting any threat to freedom of speech of the licensee, we conclude that for the Commission to have been less insistent on licensees discharging their obligations would have verged on an evasion of the Commission's own responsibilities." *Supra* Slip Op. at 10.

For the reasons stated in the General Counsel's letter and in light of the recent opinion in the *Yale* case, your application for review is denied.

Commissioner Johnson dissenting and Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-343

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 21.35(a) OF THE COMMISSION'S RULES TO AUTHORIZE INDIVIDUALLY LICENSED LAND AND AIRBORNE MOBILE UNITS FOR A FULL 5-YEAR LICENSE PERIOD FROM DATE OF GRANT

ORDER

(Adopted March 29, 1973; Released April 3, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has under consideration Section 21.35 of the Rules which, in subsection (a), provides that a license granted subsequent to the last renewal date of the class of license involved, shall be issued only for the unexpired period of the current license term for such class. Our consideration concerns only individual land and airborne mobile units licensed in the Domestic Public Land Mobile Radio Service in the name of a person who is not the licensee of the base station with which the mobile units will be associated. As a result of the Commission's present fee schedule, the current licensing procedure has become an increasing source of irritation to both this class of licensee and the Commission in that it produces burdensome and inequitable predicaments for licensees whose authorizations have been issued near the end of the term of the associated base station license. With the expiration of the associated base station license, the mobile licensee's authorization expires as well, and he must file a renewal application together with a second fee in an unreasonably short period of time.

2. We conclude that the efficiency of the Commission's processes and the fairness to its licensees would each be benefited by amending Section 21.35(a) to allow individually licensed land and airborne mobile units to be authorized to operate for a full five-year period from the date of any grant.

3. The authority for the amendment is contained in Sections 4(i) and (j), and 303(r) of the Communications Act of 1934, as amended.

4. The amendment adopted herein is procedural in nature, and hence the notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

5. Accordingly, IT IS ORDERED, That effective April 9, 1973, the Rules of Practice and Procedure ARE AMENDED as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 21.35(a) is amended by changing the period at the end of the paragraph to a colon and adding the following proviso:

§ 21.35 License period.

(a) * * *: *Provided, however,* That the license for land and airborne mobile units issued in the Domestic Public Land Mobile Radio Service in the name of a person who is not the licensee of the base station with which the mobile unit will be associated shall be issued for a full five-year term from the date of grant thereof.

* * * * * * *

F.C.C. 73-347

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MAHONING VALLEY CABLEVISION, INC., AUSTINTOWN TOWNSHIP AND COITSVILLE TOWNSHIP, OHIO For Certificates of Compliance	CAC-901, CSR-183, OH237 CAC-902, CSR-184, OH238

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. On July 25, 1972, Mahoning Valley Cablevision, Inc., proposed operator of cable television systems in the above-captioned townships (located in the 79th television market) filed applications requesting certification for the following Ohio television signals: WFMJ-TV (NBC), WKBN-TV (CBS), WYTV (ABC), Youngstown; WUAB (Ind.) Lorain, and WKBF (Ind.), and WVIZ-TV (Educ.), Cleveland, Ohio. Simultaneously, Mahoning filed petitions for special relief requesting partial waiver of Section 76.31 of the Commission's Rules.

2. Mahoning has filed for special relief because it contends that Ohio Townships cannot issue cable television franchises. In support of its contention, Mahoning furnishes a letter it received from Mr. J. Walter Dragelevich, Prosecuting Attorney of Trumbull County, Ohio, who acts as legal advisor to the county adjacent to Coitsville and Austintown Townships. Mr. Dragelevich's letter states in pertinent part, as follows:

> (I)t is our considered legal judgment that any company seeking to furnish cable television facilities to the townships within Trumbull County are (sic) free to do so without securing prior approval of Township Trustees.

Further, Mahoning has supplied a copy of Opinion No. 73 002 issued January 10, 1973, by William J. Brown, Attorney General, State of Ohio, in response to an inquiry made by Daniel T. Spitler, Prosecuting Attorney of Wood County, Ohio. Attorney General Brown's opinion states:

> In specific answer to your question it is my opinion and you are so advised that a corporation engaged in the cablevision business need not obtain authority from a township before beginning construction of its system within the township.

Accordingly, Mahoning requests special relief pursuant to Section 76.7 of the Commission's Rules to qualify under Par. 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 366 (1972),

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which provides for case by case consideration where it is claimed that there is no franchise or other appropriate authorization available for the cable operator to submit in an application for certificate of compliance. In such cases, the applicant is expected to make an acceptable alternative proposal for assuring that the substance of our rules, and specifically Section 76.31, is complied with.

3. In support of its request for special relief, Mahoning supplies a copy of the existing franchise for the City of Niles, Ohio, which contains provisions which meet most of the requirements of Section 76.31 of the Rules, and pledges that it will comply with all of the requirements of the Niles franchise and all appropriate Commission regulations. Specifically, in areas where the Niles franchise is not fully consistent with Section 76.31 of the Rules, Mahoning agrees to operate as follows: significant construction will be accomplished within one year after receiving Commission certification and a substantial percentage of the area will be energized each subsequent year until completion of the system in compliance with Rule 76.31(a)(2); initial subscribers rates will be in accordance with those set by the City of Niles, and any change in the Niles rates would have to be approved by the Niles City Council; and, pursuant to the Niles franchise, Mahoning will maintain an office in both of the Townships to handle service complaints and will abide by all present and future regulations of this Commission. Although there is a 3% franchise fee for Niles, no such fee will be paid to the two Townships involved.

4. It is appropriate to note that this is obviously a difficult area, and one which will require further consideration in our overall proceedings. We believe that we should not "freeze" cable development in localities where a supervising governmental entity is not now present, but rather should examine the applicant and its representations to determine whether on balance permission to proceed would serve the public interest. We have done so here, and find that a grant of these applications is appropriate. These grants are made subject to compliance with any further conditions imposed by the Commission during the period until March 31, 1977, which may result (i) from our overall proceedings to deal with this possible regulatory lacuna, or (ii) from further orders specifically directed to this case in event of facts being brought to our attention warranting action to protect the public interest. In any event, in 1977 we shall have the opportunity to review the matter, and may require special showings in these situations, if there has been no local regulatory change. Compare *Sun Valley Cable Communications*, FCC 73-27, —— FCC 2d ——.

In view of the foregoing, the Commission finds that a partial waiver of Section 76.31 of the Rules and grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications (CAC 901, 902) filed by Mahoning Valley Cablevision, Inc., ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73-377

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MIDWEST VIDEO CORP., DIVISION OF HOME THEATERS, INC., DEXTER, MO. For Certificates of Compliance	CAC-539, CAC-540, M0037

MEMORANDUM OPINION AND ORDER

(Adopted April 4, 1973; Released April 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On May 30, 1972, Midwest Video Corporation, Division of Home Theaters, Inc., filed the above-captioned applications for certificates of compliance to add signals to an existing cable television system at Dexter, Missouri. Dexter is located within the Poplar Bluff, Missouri, smaller television market. The system currently provides its 221 subscribers with the following signals:

KFVS-TV (CBS, Channel 12) Cape Girardeau, Missouri
WPSD-TV (NBC, Channel 6) Paducah, Kentucky
KPOB-TV (ABC, Channel 15) Poplar Bluff, Missouri
WSIL-TV (ABC, Channel 3) Harrisburg, Illinois
KSD-TV (NBC, Channel 5) St. Louis, Missouri
KPLR-TV (Ind., Channel 11) St. Louis, Missouri

In CAC-539, Midwest Video has requested authorization to carry the following distant signals:

WKMU (Educ. Channel 21) Murray, Kentucky
KTVI (ABC, Channel 2) St. Louis, Missouri

And in CAC-540, Midwest Video seeks authorization for:

WDXR-TV (Ind., Channel 29) Paducah, Kentucky

Objections to both applications have been filed by Turner-Farrar Association, licensee of Station KPOB-TV, Poplar Bluff, Missouri, and Midwest Video has replied. In addition, WDXR-TV Inc., licensee of WDXR-TV has filed comments in support of CAC-540. Midwest Video's proposal to carry WKMU has not been opposed, and is completely consistent with Section 76.59(c) of the Commission's Rules.

2. In support of its request to carry KTVI, Midwest Video argues that the signal is grandfathered since it was carried prior to March 31, 1972. Carriage of KTVI began in December, 1960; difficulties with microwave equipment caused the system to "temporarily" suspend this carriage on May 1, 1965. This suspension has continued to the

present. In its opposition, Turner-Farrar argues that since the Dexter system already carries one independent station and at least one affiliate of each major network, it cannot, consistent with Section 76.59 of the Rules, add KTVI, an ABC network affiliate. However, Section 76.65 of the Rules provides that none of the carriage rules shall be deemed to require the deletion of any television broadcast signal which a cable system was authorized to carry or was lawfully carrying prior to March 31, 1972. Since carriage of KTVI was suspended prior to the Commission's first adoption of comprehensive cable regulations in early 1966, we cannot say that the signal was ever "authorized" for carriage. However, KTVI was clearly "lawfully carried" prior to March 31, 1972. Nevertheless, we note that this carriage, while lasting approximately five years, effectively ceased seven years prior to the critical grandfathering date for our new carriage rules. In the particular circumstances of this case, and especially noting the small size of the Dexter system and the fact that suspension of carriage was in large part due to circumstances beyond the system's control, we believe that certification of KTVI is justified. However, our action here should not be interpreted to "grandfather" all signals carried by cable systems sometime prior to March 31, 1972, but discontinued prior to that date. Each such case will be carefully examined according to the uniqueness of the facts involved.

3. Midwest Video has asked that we consider separately the merits of its request to add WDXR–TV. As to WDXR–TV, it seeks either a ruling that the carriage provisions of Section 76.59 are not applicable to Dexter, or, in the alternative, a waiver of that section. Dexter is within the specified zone of Station KPOB–TV, the only station licensed to Poplar Bluff, Missouri, and the only station whose specified zone encompasses Dexter. Since KPOB–TV is a satellite station which, according to Midwest Video, does not program separately for its own service area, carries no advertising for businesses within its service area, and has no rate card of its own, being sold only in combination with its parent, Station WSIL–TV (ABC, Channel 3) Harrisburg, Illinois, Midwest Video argues that the specified zone of KPOB–TV should be disregarded when examining distant signal importation proposals. Midwest Video maintains that the rules relating to such importation are designed to preserve the program originating functions of television stations, a function which is allegedly lacking in KPOB–TV's operation. In support of Midwest Video's request for waiver of Section 76.57 of the Rules to permit importation of WDXR–TV, Midwest Video argues alternatively that since the city of Dexter is located beyond KPOB–TV's service area (predicted Grade B contour), carriage of WDXR–TV would have no adverse impact on KPOB–TV or its parent, WSIL–TV, because neither station is significantly viewed in Dexter, or that KPOB–TV's specified zone should be considered an extension of the Cape Girardeau, Missouri-Paducah, Kentucky-Harrisburg, Illinois television market (#69), thus making WDXR–TV, Paducah, Kentucky, a "must-carry" station for the Dexter system.

4. We adopted the new cable rules with full understanding that certain television markets have attained their market ranking because of the inclusion of one or more satellite stations. It was our intention to treat all similarly situated television broadcast stations equally, regardless of whether they are satellites, on the theory that satellite stations may eventually expand their local programming and leave satellite status. In this connection, Midwest Video's reliance on *Marsh Media, Ltd.*, 18 FCC 2d 164, in support of its request is not persuasive. There, the Commission waived Section 74.732(e)(1) of the Rules (which prohibits a television broadcast licensee-owned VHF translator beyond its primary station's Grade B contour and within the Grade B contour of another television station licensed to a different community), where the only television station licensed to the community of the proposed translator was a satellite. However, the primary reason for our action was that, as a result, the proposed translator community would receive ABC network programming for the first time. In Dexter, cable subscribers already receive a complement of network stations in excess of the number specified in Section 76.59, and an amount of independent stations equal to what is specified. Hence, we do not believe that a sufficient showing has been made for grant of the requested special relief.

In view of the foregoing, the Commission finds that while grant of CAC–539 would be consistent with the public interest, grant of CAC–540 would not be consistent with that interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance to Carry the Signals of Stations WKMU, Murray, Kentucky, and KTVI, St. Louis, Missouri, on the Dexter, Missouri, CATV System" (CAC–539), filed by Midwest Video Corporation, IS GRANTED, and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Application for Certificate of Compliance to Carry the Signal of Station WDXR–TV, Paducah, Kentucky, on the Dexter, Missouri, CATV Sytem" (CAC–540), filed by Midwest Video Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-351

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of NEVADA RADIO-TELEVISION, INC., ELY AND MCGILL, NEV., ET AL. For Construction Permits for New Television Broadcast Translator Stations and for New Television Translator Relay Stations	File No. BPTTV-4175, et seq.

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER REID ABSENT.

1. The Commission has before it for consideration its Memorandum Opinion and Order in *Nevada Radio-Television, Inc.*, 38 FCC 2d 555, 25 RR 2d 1197, disposing of twelve applications for construction permits for new television broadcast translator stations and twelve applications for construction permits for new television translator relay stations in Nevada, filed by various parties.[1] The Commission also has before it for consideration a "Petition for Reconsideration or Clarification," filed January 15, 1973, by Las Vegas Valley Broadcasting Company (Valley), an applicant (BPCT-4465) for a construction permit for a new television broadcast station to operate on channel 3, Las Vegas, Nevada, whose application is now in comparative hearing in Docket Nos. 19519 and 19581, with that of Western Communications, Inc. (Western), applicant (BRCT-327) for renewal of the license of television station KORK-TV, channel 3, Las Vegas, Nevada.[2] Valley seeks, in this proceeding, to have the Commission: (1) set aside its grant of the Western applications, or (2) stay construction of the translators and auxiliaries until conclusion of the comparative hearing, or (3) declare that Western shall enjoy no comparative advantage as a result of the translator and auxiliary grants.

2. Valley claims standing as a "person aggrieved or whose interests are adversely affected" by our grant of the applications of Western Communications, Inc., for construction permits for new television

[1] The Commission's action in this matter is currently pending on appeal before the United States Court of Appeals for the District of Columbia Circuit in Case No. 73-1044, *Washoe Empire* v. *Federal Communications Commission*.

[2] Before the Commission also are oppositions to the petition, filed February 2, 1973, by KSL, Inc., licensee of station KSL-TV, Salt Lake City, Utah; Screen Gems Stations, Inc., licensee of station KCPX-TV, Salt Lake City, Utah; KUTV, Inc., licensee of station KUTV, Salt Lake City, Utah (captioned as a "Statement" rather than an Opposition); and Western Communications, Inc. Valley filed a reply to these oppositions (and "Statement") on February 14, 1973.

translator stations and new translator relay stations. The basis for the alleged standing is Valley's concern that a motion to enlarge issues, filed December 27, 1972, by Western, in the proceedings in Dockets Nos. 19519 and 19581, could, if granted by the Review Board,[3] place Valley at a comparative disadvantage in its efforts to obtain a construction permit because of the vastly greater area which the translator system would permit Western to serve which would not be served by Valley's proposed station. Presumably, Valley does not seek reconsideration of the grants of applications other than those of Western.[4] Section 405 of the Communications Act of 1934, as amended, confers standing to seek reconsideration upon persons who are aggrieved or whose interests are adversely affected by a Commission action, not upon those who may be aggrieved or whose interests may be adversely affected upon the happening of some contingent event in the future. Valley is not aggrieved and its interests are not adversely affected by the filing of a motion to enlarge issues and we find, therefore, that Valley is without standing. Assuming, *arguendo*, however, that Valley had standing, it has alleged no facts which would warrant our setting aside the grants or staying construction on our own motion. We made a finding that grant of the applications would be in the public interest and this finding has not been challenged. Insofar as the petition seeks reconsideration, therefore, it will be dismissed.

3. Insofar as Valley's request for clarification is concerned, we think it sufficient to point out that the Commission was well aware of the pendency of the comparative proceeding and the issues involved therein and so noted in paragraph 16 of the Memorandum Opinion and Order, *supra*. The condition to which the grants are subject simply means that if the authorization for the primary station (KORK–TV) falls, the authorizations for the translators and associated auxiliaries fall.

For the reasons discussed, IT IS ORDERED, That the petition filed herein by Las Vegas Valley Broadcasting Company, insofar as it seeks reconsideration, IS DISMISSED, and insofar as it constitutes a request for clarification, IS GRANTED to the extent indicated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[3] On March 6, 1973, the Review Board denied Western's motion to enlarge issues (*Western Communications, Inc. (KORK–TV)*, FCC 73R–103, released March 9, 1973). Western's motion for an extension of time to file an appeal from the order of the Review Board was granted until March 30, 1973. *Western Communications, Inc.* (KORK–TV), FCC 73M–356, released March 19, 1973.

[4] In its petition, Valley asserts that, because there is common ownership of Western Communications and Nevada Radio-Television, Inc., licensee of station KOLO–TV, Reno, Nevada (also a grantee of several translators and auxiliaries in this proceeding), the Commission should not have found Nevada Radio-Television qualified. This is a matter which should have been raised in connection with Nevada Radio-Television's application for renewal of its license for station KOLO–TV and is not subject to collateral attack at this late date and in this forum.

F.C.C. 73-287

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re Request by
HON. FRANK F. FASI, MAYOR OF THE CITY AND COUNTY OF HONOLULU
For STA for Transmission of Proceedings of Pacific-Asian Congress of Municipalities

MARCH 13, 1973.

HON. FRANK F. FASI,
Mayor of the City and County of Honolulu,
Honolulu, Hawaii 96813

Subject: Special Temporary Authorization.

DEAR MAYOR FASI: You are hereby authorized to operate, under the conditions herein specified, the transmitting apparatus herein described for the period beginning on the date of this letter, and ending April 2, 1973, for the purpose of distributing multi-language translations of the proceedings at the general session of the Pacific-Asian Congress of Municipalities.

1. Location of Transmitter(s)—Sheraton-Waikiki Hotel, Honolulu, Hawaii, Latitude 21°16′50″ North, Longitude 157°50′01″ West.
2. Frequencies of Operation (kHz): 120, 136, 168, 216, 232, 248, 280.
3. Frequency Tolerance—±0.01%.
4. Power—The input power to the final radio frequency stage shall be kept at the lowest possible level required to accomplish the desired purpose, but in no event shall such power exceed 500 mW.
5. Emission—6A3.
6. Emission Limitation—The occupied bandwidth of the emission, pursuant to Section 2.202(a), shall not exceed 8 kHz.
7. Antenna—Inductive wire loop.
8. Operator Qualifications—The operator in charge shall hold a valid first-class or second-class radiotelephone license.
9. Hours of operation—A log shall be maintained showing hours of operation.
10. Station Identification—Transmissions shall be identified with the call sign WLHL prior to start of operation each day, at the noon lunch break, and after the close of conference sessions each day as coming from meetings of the Pacific-Asian Congress of Municipalities being conducted at the Sheraton-Waikiki Hotel, Honolulu, Hawaii.

This Special Temporary Authorization is granted under the provisions of Section 15.2(b) of the Commission's Rules. Operation of the transmitting apparatus herein described is subject to the conditions that no harmful interference is caused to any authorized service and

that interference must be tolerated that may be received from any other incidental or restricted radiation device, industrial, scientific, or medical equipment, or from any authorized radio station. In addition, this authorization is granted upon the express condition that it may be terminated by the Commission at any time without advance notice or hearing if in its discretion the need for such action arises. Nothing contained herein shall be construed as a finding by the Commission that the authority herein granted is or will be in the public interest beyond the express terms hereof.

This Special Temporary Authorization shall not vest in the grantee any right to operate the station nor any right to the use of the frequencies granted in the authorization beyond the term herein. Neither the authorization nor the right granted hereunder shall be assigned or otherwise transferred in violation to the Communications Act of 1934, as amended. This authorization is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934, as amended.

This authorization is effective immediately, and will expire at NOON, EST, April 2, 1973.

This is your license; it must be posted.

By Direction of The Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
REV. PAUL E. DRISCOLL, RICHMOND HILL, N.Y.
Concerning Personal Attack Re National
Broadcasting Co.

MARCH 22, 1973.

EUGENE JAMES MCMAHON, ESQ.,
Bank Building,
103-42 Lefferts Boulevard,
Richmond Hill, N.Y. 11419

DEAR MR. MCMAHON: This will refer to your complaint of September 27, 1972 on behalf of Rev. Paul E. Driscoll alleging that NBC has failed to comply with the Commission's rules regarding the broadcast of personal attacks. Your complaint alleges that on Sunday, August 27, 1972, Mr. William Baird appeared on the WNBC-TV program NEWSLIGHT to discuss his views on the topic of abortion and that during such appearance and discussion Mr. Baird made several statements which constituted personal attacks on the Roman Catholic Church and on Rev. Driscoll. You have submitted copies of correspondence between Rev. Driscoll and NBC indicating that Rev. Driscoll requested time to respond to these alleged attacks and that such request was rejected by the station on the ground that Mr. Baird's remarks did not constitute a personal attack within the meaning of the Commission's rules. Your complaint requests the Commission to find NBC in violation of the personal attack rule and to direct the station to afford Rev. Driscoll an adequate opportunity to present a response.

In particular, you cite the following remarks by Mr. Baird as evidencing personal attacks on Rev. Driscoll and the Roman Catholic Church.

(a) (Baird) . . . where I have failed somehow is to really ignite in power groups—I'm talking about the Protestant Council of Churches, the Jewish faith—for them to have enough guts—GUTS—to stand up and say to the Roman Catholic Church—no longer are we going to permit you to go unchallenged—you calling us murderers—no longer are we going to let you say that we are now going to kill the elderly, the retarded—that if we could somehow stop this wave of propaganda aimed at non-Catholics, then we could win.

You submit that these statements constitute a personal attack on the Roman Catholic Church in that they assert that the Church has accused the Protestants and Jews of the crime of murder.

(b) (Baird)—we're going to try to neutralize the power of the Church by bringing them into court—for lobbying illegally. There's as you know a law called 501 subsection 3 C that says you may not lobby and be tax exempt—remember the Sierra Club—the well-known conservation group—they lost their tax exemp-

tion for doing that. We are saying that as long as the Catholic Church continues to lobby illegally then why not forfeit their tax exemption?

You state that these remarks accuse the Roman Catholic Church of lobbying illegally and therefore constitute a personal attack.

(c) (Baird) It is well known that there's a Father Drinan—no, not Father Drinan—the Father out in Nassau County whose name I'm just blanking out on but who's head of the Human Rights Committee, who's sole job it is to coordinate all anti-abortion forces to stop the New York law. Yet he is paid by the Church, his phones are paid by the Church, his mailings are sent out by the Church. Clearly against the law.

These remarks, you submit, sufficiently identify Rev. Driscoll as the Human Life Coordinator in the Diocese of Rockville Centre, encompassing Nassau and Suffolk Counties and constitute a personal attack on him in that they assert he is engaged in lobbying contrary to the Internal Revenue laws applicable to tax-exempt religious institutions.

It must first be noted that the statements in question were apparently made in the course of a bona fide news interview and as such would be exempt from the personal attack rule under Section 73.679(b)(3) of the Commission's Rules. Although attacks made during such bona fide news programs are exempted in order to avoid any inhibition in this important area of broadcast journalism, Section 73.679 specifically notes that the fairness doctrine is nonetheless applicable in such situations. The Commission has indicated in this regard that where a personal attack is made on a person or group in the course of an exempt news program covering a controversial issue of public importance, "there is a clear and appropriate spokesman to present the other side of the attack issue—the person or group attacked." *Amendment of Part 73 of the Rules relating to Procedures in the Event of a Personal Attack*, 12 FCC 2d 250, 253 (1968). However, before this specific language would be applicable, it must first be shown that a personal attack has in fact been made on a person or group in the course of the exempt news program.

As defined by Section 73.679(a), a personal attack is an attack "made upon the honesty, character, integrity or like personal qualities of an identified person or group." In reviewing personal attack complaints, the Commission's function is not to substitute its own judgment for that of the licensee, but to determine whether the licensee has acted reasonably and in good faith in arriving at its decision as to whether a personal attack has been made. *Sidney Willens and Russell Millin*, 33 FCC 2d 304 (1972).

The Commission is unable to conclude that WNBC was unreasonable in its judgment that the above-quoted remarks by Mr. Baird do not constitute a personal attack upon either Rev. Driscoll or the Roman Catholic Church within the meaning of the Commission's rule and precedent. Mr. Baird's remarks calling on the Protestant and Jewish faiths "to stand up and say to the Roman Catholic Church—no longer are we going to permit you to go unchallenged—you calling us murderers. . . ." may state his particular view and interpretation of the Catholic position on abortion in a highly argumentative manner, but

they do not attack the honesty, integrity, or character of the Catholic Church in taking that alleged position. As the Commission has declared: "The statement of a particular view, however strongly or forcefully made, does not necessarily result in a personal attack." *Pennsylvania CATV Ass'n, Inc.*, 66 RR 2d 112, 114 (1965).

Similarly, Mr. Baird's statements alleging that the Roman Catholic Church and by implication, Rev. Driscoll are lobbying against New York's liberalized abortion law contrary to the Church's tax-exempt status under the Internal Revenue laws do not evidence a personal attack within the meaning of the Commission's rule. Mr. Baird did assert that such alleged lobbying activities were "clearly against the law". However, it should be clear that not all charges of illegality present attacks on honesty, character or integrity. One may assert that a person or group has in fact acted in violation of the law although the person or group assumed that such action was in full accord with the law's provisions. In such case, the charge is one of "illegality", but it is the judgment of the person or group in interpreting the law which is questioned, not their honesty, character or integrity. It would appear that while Mr. Baird's statements sharply dispute the judgment of the Church and Rev. Driscoll in interpreting the tax laws applicable to religious institutions, they do not challenge or otherwise cast dispersions on either party's honesty, character or integrity. The remarks in question do not insinuate that either the Church or Rev. Driscoll has knowingly or intentionally violated the tax laws or is otherwise guilty of acts which are, by definition, criminal or dishonest, such as fraud or embezzlement. In substance, Mr. Baird's statements take emphatic and opinionated exception with the Church's tax exemption in light of its alleged lobbying efforts, but they do not constitute a personal attack. As the Commission has stated: ". . . strong disagreement, even vehemently expressed, does not constitute a personal attack in the absence of an attack upon character or integrity." *Port of New York Authority*, 25 FCC 2d 417, 418 (1970).

With respect to NBC's general obligations under the fairness doctrine, it should be noted that fairness only requires the broadcaster to take affirmative steps to afford a reasonable opportunity for presenting contrasting viewpoints on controversial issues of public importance in the station's overall programming. Because it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views, no particular person or group is entitled to appear on the station. In this regard, the copy of NBC's response to Rev. Driscoll which you have submitted indicates that the Catholic viewpoint on the issue of abortion has received considerable coverage in the station's overall programming.

On the basis of the information before the Commission and for the reasons set forth above, we are unable to conclude that NBC was unreasonable in its judgment that the remarks in question did not constitute a personal attack on the Roman Catholic Church or Rev. Driscol, or that the station has otherwise failed to comply with the fairness doctrine. Accordingly, no further Commission action appears to be warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
(For Chief, Broadcast Bureau).

109-035—73——6

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ROME HOSPITAL AND MURPHY MEMORIAL HOSPITAL, ROME, N.Y.
Concerning Personal Attack Re Station
WKAL, Rome, N.Y.

MARCH 29, 1973.

HERBERT L. SKOGLAND, M.D.,
Vice-President, Medical Staff,
Rome Hospital and Murphy Memorial Hospital,
1500 North James Street,
Rome, N.Y. 13440

DEAR DR. SKOGLAND: This is in response to your letter, dated July 18, 1972, alleging that Radio Station WKAL, Rome, New York, has failed to comply with the Commission's personal attack rule in respect to its September 2, 1971, broadcast of certain statements made by Dr. Antonio Luque.

We regret that we are just now able to respond to your letter, but the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once. Therefore, it was necessary to postpone consideration of your complaint, which normally we would have dealt with much earlier.

You enclosed a copy of the statements which you state were made during the program in question. It appears from these statements that Dr. Luque referred to some of the doctors and nurses of the Rome City Hospital Medical Staff as "incompetent."

The personal attack rule, Section 73.123 of the Commission's Rules and Regulations, states as follows:

> When, during the presentation of view on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

Mere mention of a person or group, or even certain types of unfavorable references thereto, does not constitute personal attacks as defined by the Commission; and bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events are exempt from the personal attack rules.

An "incompetent" person is defined in Webster's dictionary as a person "without adequate ability or knowledge . . ." Honesty, character, integrity and other like qualities applicable to the personal attack rule are characteristics which relate to the personal credibility or moral turpitude of an individual and not to the particular individual's ability or knowledge. Accordingly, it does not appear that the use of the word "incompetent" constitutes a personal attack, as defined by the Commission's Rules.

In our letter of December 8, 1971, to Dr. Rudolph J. Ross of the Medical Staff we enclosed information regarding the fairness doctrine and the procedures to be followed in seeking relief pursuant thereto. A form copy is enclosed. As recommended therein, you should first bring your complaint to the licensee's attention. If, after contacting WKAL you are not satisfied that it has fulfilled its obligations and the Commission is so advised in pertinent, factual detail, as set forth in our letter to Dr. Ross, we will, if appropriate, request a statement from WKAL and provide you with an opportunity to comment on WKAL's statement if you so desire. Thereafter, on the basis of all available information, the Commission will attempt to determine whether WKAL's actions under the circumstances violated any rules or policies of the Commission.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
(For Chief, Broadcast Bureau).

F.C.C. 73-261

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
PUBLIC BROADCASTING SERVICE
For Extension and Expansion of STA To
Conduct Technical Evaluation Tests

MARCH 7, 1973.

PUBLIC BROADCASTING SERVICE
955 L'Enfant Plaza North SW.,
Washington, D.C. 20024.

GENTLEMEN: This refers to your request dated January 3, 1973, for extension and expansion of special temporary authority (STA), pursuant to section 73.666 of the Commission's rules, filed on behalf of all PBS television member stations, to permit utilization of signals other than standard television signals to conduct technical evaluation tests of the National Bureau of Standards' (NBS) "captioning for the deaf" coding technique. You request that the grant of the authority be continued for the additional period of one year, during which time you propose to use line 21 of the television picture to caption programs for the deaf.

The Commission is of the view that grant of your request is warranted and, accordingly, authority is hereby granted, pursuant to the provisions of section 73.666 (a), (b), and (c), for a period of one year from the date of this letter to all PBS-member stations. PBS shall advise all affiliates of this action which is subject to the following conditions:

(1) Upon completion of the experimentation, a complete report and evaluation of the results will be submitted to the Commission by PBS.
(2) There will be no material degradation of the broadcast signal, and if there is, the experiment will cease.
(3) No video recordings shall be made or distributed containing the special coded information for broadcast by any station after the term of this authorization.
(4) During the period of this authorization no precise time and no frequency information will be transmitted which can be utilized as reference standards.
(5) This authorization is granted on the basis that it contains no determination, express or implied, as to any continuance of such transmissions beyond the period of this authorization.

Commissioner Reid was absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-306

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by RKO GENERAL, INC. For Tax Certificate	BALH-1722, BASCA-519

MARCH 21, 1973.

MR. WILLIAM S. GREEN, ESQ.,
Pierson, Ball and Dowd,
100 Ring Building,
Washington, D.C. 20036

DEAR MR. GREEN: This refers to your letter of December 5, 1972, written on behalf of RKO General, Inc., requesting a tax certificate under Section 1071 of the Internal Revenue Code, 26 U.S.C. 1071, in connection with the assignment of license and broadcasting facilities of Station WHBQ-FM (now WEZI-FM), Memphis, Tennessee (BALH-1722, BASCA-519).

RKO, at the time we approved the transfer of Station WHBQ-FM and thereafter, was also the licensee of WHBQ-AM and TV, Memphis. You base your request for a tax certificate on the ground that separation of WHBQ-FM from the commonly owned VHF television station in the same market furthers the policy adopted by the Commission in Docket 18110.

The Commission has reviewed your request and has determined that issuance of a tax certificate would be proper in this case. We are therefore enclosing the requested certificate.

Commissioner H. Rex Lee dissenting and issuing a statement.

BY DIRECTION OF THE COMMISSION.
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

1. On November 30, 1972, the Federal Communications Commission, through its Broadcast Bureau, granted its consent to the assignment of the license of Station WHBQ-FM (now WEZI-FM), Memphis, Tennessee, from RKO General, Inc. to Southern Broadcasting Company (BALH-1722, BASCA-519).

2. It is hereby certified that the above assignment of license was necessary or appropriate to effectuate the new policy adopted by the Commission with respect to ownership and control of broadcast facilities (First Report and Order in Docket No. 18110, FCC 70-310).

3. This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof I have hereunto set my hand and seal this day of March, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

On November 30, 1972, the Broadcast Bureau, by delegated authority, granted the application of RKO General, Inc. for assignment of the license of Station WHBQ–FM (now WEZI(FM)), Memphis, Tennessee. At the time of the grant and thereafter, RKO General was and remains the licensee of Stations WHBQ–AM–TV in Memphis. In its assignment application, RKO General indicated that its disposition of the FM facility was part of a corporate policy to reduce its broadcast holdings to no more than one station in any single market, which would further the Commission's goal of separating aural and VHF television facilities under common ownership. Now, RKO General requests the issuance of a tax certificate under Section 1071 of the Internal Revenue Code in connection with its sale of WHBQ–FM on the ground that the separation of this aural facility from a commonly-owned VHF television station in the Memphis market serves the diversification policies adopted by the Commission in Docket No. 18110. The majority agrees with the RKO General position and issues the requested tax certificate.

While, admittedly, this is a case of first impression and the sale of WHBQ–FM does work to achieve the Commission's general diversification objectives, I cannot concur in the majority's decision. When the Commission provided for the issuance of tax certificates, it contemplated the complete separation of commonly-owned aural and VHF television facilities in the same market, and, accordingly, tax certificates have been issued only in those cases where total separation has been effected. In fact, in July of 1972, the Commission denied a request by RKO General for a declaratory ruling to the effect that a tax certificate would issue upon the separation of commonly-owned AM and FM stations in the same market (36 FCC 2d 123) even though it was argued that disposition of an aural facility in such circumstances furthered diversification goals. The rationale for the Commission's action, which is equally applicable here, was that such separation does not directly effectuate the expressed policies in Docket No. 18110 to achieve the *complete* separation of aural and VHF television facilities in the same market. Moreover, the issuance of a tax certificate in the present situation may not promote diversification in the long run since it effectively permits the disposition of less profitable stations at a tax advantage and encourages the retention of remaining aural and television facilities by a licensee. It also favors the piecemeal disposition of commonly-owned stations to facilitate further claims for tax certificates to the disadvantage of those licensees who separated their holdings as contemplated in Docket No. 18110.

Since RKO General's sale of WHBQ–FM did not result in compliance with the Commission's existing multiple ownership rules, I have dissented to the issuance of a tax certificate. Nevertheless, I would favor some measure of alternative relief whereby RKO General (and similarly-situated licensees) could acquire a tax certificate covering both aural facilities if it disposed of its Memphis AM station. Such action would effectively encourage a more rapid disposition of current broadcast holdings and would preclude any delay in the separation of aural and television facilities based on the availability of tax certificates.

F.C.C. 73R-111

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SALEM BROADCASTING CO., INC., SALEM, N.H.	Docket No. 19434 File No. BP-18325
NEW HAMPSHIRE BROADCASTING CORP., SALEM, N.H.	Docket No. 19435 File No. BP-18479
SPACETOWN BROADCASTING CORP., DERRY, N.H.	Docket No. 19436 File No. BP-18492
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted March 13, 1973; Released March 15, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a motion to enlarge issues, filed October 17, 1972, by Spacetown Broadcasting Corporation (Spacetown), seeking the addition of a site availability and zoning issue against New Hampshire Broadcasting Corporation (New Hampshire).[1]

2. Petitioner argues that an issue should be added to this proceeding to determine the availability of New Hampshire's proposed antenna tower site in view of the actions taken by the Salem, New Hampshire, Board of Adjustment. The facts, as alleged, are not in dispute. On July 27, 1972, the Salem Board of Adjustment denied the applicant's resubmitted petition for a zoning variance to erect four radio towers and a cement block house for a transmitter at New Hampshire's proposed site. The Board again denied New Hampshire's request on September 21, 1972. Having thus exhausted its remedies before the Board, petitioner alleges that New Hampshire would have to seek relief in the courts or find an alternative site. Therefore, Spacetown contends that the designation of a zoning and site availability issue is clearly warranted. The Broadcast Bureau agrees with Spacetown that a serious question has been raised as to whether New Hampshire has the authority to construct its towers on its proposed site and would support the addition of an appropriate issue, absent a showing by New Hampshire to the contrary.

3. In response, New Hampshire states that it has filed an appeal of the Board of Adjustment's decision in the Rockingham County Su-

[1] Also before the Board for consideration are: (a) Broadcast Bureau's comments, filed October 30, 1972; (b) response, filed November 1, 1972, by New Hampshire; (c) errata to (b), filed November 2, 1972, by New Hampshire; (d) reply, filed November 13, 1972, by Spacetown; (e) request for leave to file attached pleading, filed November 15, 1972, by New Hampshire; and (f) response to (e), filed November 22, 1972, by Spacetown.

perior Court and expresses confidence in the likelihood of its success.[2] As evidence of its optimism, New Hampshire alleges that it intends to purchase the property proposed for its site.[3] Therefore, New Hampshire submits, the addition of the requested issue would serve no purpose at this time unless the Commission believes that it, rather than the Rockingham County Superior Court, is a more appropriate forum to resolve the merits of New Hampshire's appeal.

4. In reply, Spacetown maintains that New Hampshire has made no showing of reasonable assurance of the availability of its site. Petitioner contends that New Hampshire's allegations are not supported by an affidavit of a party having knowledge thereof, as required by Section 1.229 of the Commission's Rules. Furthermore, even assuming compliance with Section 1.229, petitioner asserts that the allegations do nothing to lessen the need for designating the requested issue. According to petitioner, the fact that New Hampshire has decided to purchase the property is irrelevant to the question of whether it will be permitted to build its transmitter site on the property. Moreover, even if ownership were relevant, Spacetown claims, the option to purchase has already expired. In addition, petitioner submits the letter of an attorney whose professional opinion is that the appeal will not be successful.[4]

5. Spacetown's request for the addition of a site availability issue will be granted. Although the Commission and Review Board have traditionally been reluctant to specify issues inquiring into local zoning matters, since they are ordinarily within the province of local authorities, an applicant is required to have some reasonable ground for believing that his transmitter site will be available for the use specified. See *William R. Gaston*, 35 FCC 2d 615, 24 RR 2d 741 (1972); *Marvin C. Hanz*, 21 FCC 2d 420, 18 RR 2d 310 (1970). Here, in light of the fact that New Hampshire's efforts to secure a zoning variance have been twice denied, we are of the view that it has failed to establish that it has a reasonable expectancy of obtaining approval of its plans from the local authorities. See *Edina Corp.*, 4 FCC 2d 36, 7 RR 2d 767 (1966). New Hampshire's unexplained optimism in the likelihood of the success of its appeal and its intention to purchase the property proposed for its site will simply not suffice. Under the circumstances as presented in the pleadings before us, we think that there is sufficient doubt as to whether the site may be used for the purpose proposed to warrant enlargement of the issues as requested by petitioner. *El Camino Broadcasting Corp.*, 14 FCC 2d 361, 13 RR 2d 1260 (1968).

6. ACCORDINGLY, IT IS ORDERED, That the request for leave to file attached pleading, filed November 15, 1972, by New Hampshire Broadcasting Corporation, IS DENIED; and

[2] The appeal was filed on October 17, 1972.

[3] New Hampshire attaches to its opposition pleading a copy of a letter sent to the Commission on October 27, 1972, advising it of its intention to purchase the property proposed for its site and that a timely appeal had been filed in the Rockingham County Superior Court.

[4] New Hampshire's request for leave to file attached pleading, filed November 15, 1972, will be denied. New Hampshire has not satisfactorily explained why it did not include the material contained therein in its opposition. See the Board's Public Notice on the *Filing of Supplemental Pleadings before the Review Board* No. 90836, released October 11, 1972.

7. IT IS FURTHER ORDERED, That the petition to enlarge issues, filed October 17, 1972, by Spacetown Broadcasting Corporation IS GRANTED; and

8. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED to include the following issue:

To determine whether New Hampshire Broadcasting Corporation has a reasonable expectancy of obtaining permission to construct its proposed towers at the site specified in its application.

9. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of the evidence and the burden of proof under the issue added herein SHALL BE on New Hampshire Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-363

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SAMMONS COMMUNICATIONS, INC., D.B.A. TURLOCK CABLEVISION, TURLOCK, CALIF.	CAC-674, CA460
SAMMONS COMMUNICATIONS, INC., D.B.A. TURLOCK CABLEVISION, UNINCORPORATED AREA 7 OF STANISLAUS COUNTY, CALIF. For Certificates of Compliance	CAC-675, CA461

MEMORANDUM OPINION AND ORDER

(Adopted April 4, 1973; Released April 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON AND H. REX LEE CONCURRING IN THE RESULT.

1. On June 16, 1972, Sammons Communications, Inc., d/b/a Turlock Cablevision, filed the above-captioned applications for certificates of compliance to begin cable television service at Turlock, California, and Unincorporated Area 7 of Stanislaus County, California, communities located in the Sacramento-Stockton-Modesto, California television market (#25). Sammons proposes to carry the following California television broadcast signals: KCRA-TV (NBC), KXTV (CBS), KVIE (Educ.), KTXL-TV (Ind.), all Sacramento; KOVR (ABC), Stockton; KSBW-TV (NBC), Salinas; KNTV (NBC), San Jose; KLOC-TV (Ind.), Modesto; KMST (CBS), Monterey; KFSN-TV (CBS), Fresno; KBHK-TV (Ind.), San Francisco; KUTV (Ind.), Oakland. Sammons asserts the right to carry KCRA-TV, KXTV, KVIE, KOVR, KSBW-TV, KNTV, KLOC-TV, KMST and KFSN-TV, pursuant to Section 76.65 of the Commission's Rules,[1] and to carry KTXL, KBHK-TV, and KUTV pursuant to Section 76.61 of the Rules (See Appendix A). In addition, Sammons requests a partial waiver of Section 76.251 of the Rules. On August 7, 1972, Great Western Broadcasting Corporation, licensee of Television Broadcast Station KXTV, Sacramento, California, filed an opposition to Sammons' applications.

[1] Section 76.65 of the Rules provides that:
"The provisions of §§ 76.57, 76.59, 76.61, and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972: *Provided, however,* That if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of this subpart. If a cable television system in a community is authorized to carry signals, either by virtue of specific Commission authorization or otherwise, any other cable television system already operating or subsequently commencing operations in the same community may carry the same signals. (Any such new system shall, before instituting service, obtain a certificate of compliance, pursuant to § 76.11.)"

2. Great Western argues that Sammons' proposed carriage of KNTV, KSBW–TV, KMST–TV, and KFSN–TV should be counted against its quota of distant independents, and that carriage of KUTV and KBHK–TV should therefore be denied. Great Western urges that Section 76.61(c) of the Commission's Rules was "intended to cover the situation in which CATV would not otherwise have any distant signals (or only one) because local stations provide minimum service," and it claims that "Section 76.61(c) clearly provides no right to carry distant signals when two or more distant signals are already available to CATV pursuant to Section 76.61(b)." In support of its argument, Great Western cites *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, and it states that the Commission said it would permit cable television systems "in certain circumstances to carry the non-network programs of distant network affiliated stations in lieu of true independent stations." Great Western urges that, in any event, Sammons' certificates should be conditioned to require that it provide syndicated program exclusivity to all local stations.

3. We reject Great Western's arguments. Section 76.61(c) of the Rules provides cable television systems with two distant *independent* signals. While it is true that if a system adds a distant network signal to fill out its "minimum service" pursuant to Section 76.61(b) of the Rules, this will reduce the number of distant independent signals that the system may carry pursuant to Section 76.61(c) of the Rules, this does not apply to the present situation. See Paragraph 90, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 177. Sammons proposes a full complement of local network signals plus four grandfathered distant signals. Since Sammons is not proposing the distant network signals to meet the "minimum service" requirements of Section 76.61(b) of the Rules, but rather proposes to carry them on basis of their grandfathered status, these signals do not count against the "bonus" distant independent signals of Section 76.61(c) of the Rules. Great Western also cites Paragraph 18 of *Reconsideration*, *supra*, at 333, which allows a cable television system to seek "carriage of syndicated programming from full or partial network stations instead of from independents . . . because of inordinate costs involved in obtaining independent signals." Clearly this is not the present situation, and does not represent a general policy of equating distant network affiliates with distant independents. In sum, it appears that Sammons' signal carriage proposal is consistent with our rules except as discussed below.

4. While not raised by the parties, we find *sua sponte* that Sammons' proposed signal carriage is not grandfathered in Unincorporated Area 7, and carriage of KNTV, KSBW–TV, KMST–TV and KFSN–TV must therefore be denied in that area. The following circumstances lead to this finding. On January 19, 1971, National Trans-Video, Inc.,[2] filed a distant signal waiver petition pursuant to former Section 74.1107 of the Rules in which it sought authority to include the

[2] On November 26, 1971, National Trans-Video, Inc.'s name was changed to Sammons Communications, Inc.

distant educational signal of KQED, San Francisco, California, as part of its proposed service (CATV 100–569) for a new cable television system at Turlock, California. That petition was also intended to serve as notification pursuant to former Section 74.1105 of the Rules, and listed nine Grade B or better signals whose carriage was proposed: KCRA–TV, KXTV, KOVR, KVIE, KSBW–TV, KNTV, KLOC–TV, KMST, and KFRE–TV. Although the proposed carriage of KQED elicited objections, the proposed carriage of the remaining nine signals was unopposed, and, accordingly, their carriage is grandfathered in Turlock pursuant to Section 76.65 of the Rules.[3] Notification of the nine signals was given for only Turlock and not for Unincorporated Area 7. For definitional purposes, each community has always been considered a separate and distinct cable television system requiring separate notifications or applications.[4] Consequently, the nine signals are not grandfathered and the proposed carriage of KNTV, KSBW–TV, KMST–TV and KFSN–TV must be denied in Unincorporated Area 7.

5. Nor are we persuaded by Great Western's request that Sammons' certificates of compliance be conditioned to require that it give syndicated program exclusivity. Initially, we note that Great Western has already received assurances from Sammons that it will be provided syndicated program exclusivity. Further, cable systems are expected to comply with the syndicated program exclusivity requirement of Section 76.151 of the Rules; however, the certificating process does not contain any requirement that cable systems affirmatively agree to comply with these rules. *Paxton Community Antenna System, Inc.*, FCC 72–1168, 38 FCC 2d 904, 906.

6. Sammons requests a partial waiver of Section 76.251 of the Commission's Rules: specifically, it asks that Section 76.251(a)(5) of the Rules[5] be waived so it may provide one educational access channel to serve both Turlock and Unincorporated Area 7. In support of its request, Sammons states: that it will provide separate public and local governmental access channels to both Turlock and Unincorporated Area 7; that Unincorporated Area 7 of Stanislaus County is immediately contiguous to and virtually surrounded by the City of Turlock; that the City of Turlock and Unincorporated Area 7 do not have individual and independent school districts, but rather are served by a single unified school district so that there is only one school administration serving both communities and thus only one entity which can utilize an educational access channel; and that if demand for additional educational access arises, it commits itself to make additional

[3] Section 76.65 of the Rules provides in pertinent part that:
"The provisions of §§ 76.67, 76.59, 76.61, and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972. . . ."

[4] The Note to Section 76.5(a) of the Rules provides:
NOTE: In general, each separate and distinct community or municipal entity (including single, discrete, unincorporated areas) served by cable television facilities constitutes a separate cable television system, even if there is a single headend and identical ownership of facilites extending into several communities. See e.g., *Telerama, Inc.*, 3 FCC 2d 585 (1966); *Mission Cable TV, Inc.*, 4 FCC 2d 236 (1966).

[5] Section 76.251(a)(5) of Rules provides in pertinent part that:
"Each such system shall maintain at least one specially designated channel for use by local educational authorities;"

channels available to meet such demand. In these circumstances, we believe that grant of Sammons' waiver request would be reasonable and appropriate. We note that Sammons is proposing to install sufficient channel capacity to allow it to satisfy full access requirements on both systems, and we expect that if sufficient demand develop, Sammons will make additional access channels available. Compare *Saginaw Cable TV Co.*, FCC 73–121, 39 FCC 2d 496.

7. Although not raised in the objections, we believe it appropriate to note *sua sponte* certain variations in Sammons' franchises from the standards of Section 76.31 of the Commission's Rules. Sammons' franchise for Turlock was awarded by the City Council on September 1, 1970, after a full public proceeding. The initial term of the franchise is 20 years; subscriber rates are established which can only be changed with the consent of the City Council; a local office must be maintained; a construction schedule is specified; a procedure for resolution of complaints is specified; and an annual fee of 5 percent must be paid to the City. Sammons' franchise for Unincorporated Area 7 was awarded by the Board of Supervisors of Stanislaus County on November 17, 1970, after a full public proceeding. The initial term of the franchise is 20 years; subscriber rates are established which can only be changed with the consent of the Board of Supervisors; and an annual fee of 5 percent must be paid to the County. Further, Sammons commits itself to resolving all subscriber complaints within no more than three business days of their receipt; and states it will construct the system in Unincorporated Area 7, in accordance with the construction schedule specified in its franchise for the City of Turlock. Only substantial compliance with Section 76.31 of the Rules must be demonstrated for franchises granted before March 31, 1972, and, measured by the criteria established by *CATV of Rockford, Inc.*, FCC 72–1105, 38 FCC 2d 10, *reconsideration denied* FCC 73–293, —— FCC 2d ——, we find that these franchises substantially comply with Section 76.31 of the Rules in a manner sufficient to justify a grant of the above-captioned applications until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Great Western Broadcasting Corp. Pursuant to Section 76.27" filed August 7, 1972, IS DENIED.

IT IS FURTHER ORDERED, That Section 76.251(a)(5) of the Rules IS WAIVED to the extent indicated above, and that the applications (CAC–674, 675) filed by Sammons Communications, Inc., ARE GRANTED to the extent indicated in Paragraph 4 above and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX A

§ 76.61 Provisions for first 50 major television markets.

A cable television system operating in a community located in whole or in part within one of the first 50 major television markets listed in § 76.51(a) shall carry television broadcast signals only in accordance with the following provisions:

(a) Any such cable television system may carry, or on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose specified zone the community of the system is located, in whole or in part: *Provided, however,* That where a cable television system is located in the designated community of a major television market, it shall not carry the signal of a television station licensed to a designated community in another major television market, unless the designated community in which the cable system is located is wholly within the specified zone (see § 76.5(f)) of the station, except as otherwise provided in this section;

(2) Noncommercial educational television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(3) Television translator stations with 100 watts or higher power serving the community of the system and, as to cable systems that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the system. In addition, any cable system may elect to carry the signal of any noncommercial educational translator station;

(4) Television broadcast stations licensed to other designated communities of the same major television market (Example: Cincinnati, Ohio-Newport, Ky., television market);

(5) Commercial television broadcast stations that are significantly viewed in the community of the system. See § 76.54.

(b) Any such cable television system may carry sufficient additional signals so that, including the signals required to be carried pursuant to paragraph (a) of this section, it can provide the signals of a full network station of each of the major national television networks, and of three independent television stations: *Provided, however,* That in determining how many additional signals may be carried, any authorized but not operating television broadcast station that, if operational, would be required to be carried pursuant to paragraph (a)(1) of this section, shall be considered to be operational for a period terminating 18 months after grant of its initial construction permit. The following priorities are applicable to the additional television signals that may be carried:

(1) *Full network stations.* A cable television system may carry the nearest full network stations, or the nearest in-state full network stations;

NOTE: The Commission may waive the requirements of this subparagraph for good cause shown in a petition filed pursuant to § 76.7.

(2) *Independent stations.* (i) For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station: *Provided, however,* That if signals of stations in the first 25 major television markets (see § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two closest such markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television station located within 200 air miles of the reference point for the community of the system (see § 76.53), or, if there is no such station, either the signal of any independent VHF television station located within 200 air miles of the reference point for the community of the system, or the signal of any independent UHF television station.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

(ii) Whenever, pursuant to Subpart F of this part, a cable television system is required to delete a television program on a signal carried pursuant to subdivision (i) of this subparagraph or paragraph (c) of this section, or a program on such a signal is primarily of local interest to the distant community (e.g.,

a local news or public affairs program), such system may, consistent with the program exclusivity rules of Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the cable system need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

(c) After the service standards specified in paragraph (b) of this section have been satisfied, a cable television system may carry two additional independent television broadcast signals, chosen in accordance with the priorities specified in paragraph (b)(2) of this section: *Provided, however,* That the number of additional signals permitted under this paragraph shall be reduced by the number of signals added to the system pursuant to paragraph (b) of this section.

(d) In addition to the noncommercial educational television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry the signals of any noncommercial educational stations that are operated by an agency of the State within which the system is located. Such system may also carry any other noncommercial educational signals, in the absence of objection filed pursuant to § 76.7 by any local noncommercial educational station or State or local educational television authority.

(e) In addition to the television broadcast signals carried pursuant to paragraphs (a) through (d) of this section, any such cable television system may carry:

(1) Any television stations broadcasting predominantly in a non-English language; and

(2) Any television station broadcasting a network program that will not be carried by a station normally carried on the system. Carriage of such additional stations shall be only for the duration of the network programs not otherwise available, and shall not require prior Commission notification or approval in the certificating process.

(f) Where the community of a cable television system is wholly or partially within both one of the first 50 major television markets and another television market, the provisions of this section shall apply.

F.C.C. 73-348

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SPECTRUM COMMUNICATIONS, INC., WESTFIELD, MASS. For Construction Permits in the Cable Television Relay Service	CPCAR-342

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE NOT PARTICIPATING; COMMISSIONER REID ABSENT.

1. Pending is an application for a microwave radio station in the Cable Television Relay Service (Part 78 of the Commission's Rules) filed by Spectrum Communications, Inc. (Spectrum). The facilities applied for would be used to relay five television broadcast signals from East Mountain in Westfield, Massachusetts to three separate receiving points located in Agawam, West Springfield, and Westfield, Massachusetts for transmission on Spectrum owned cable television systems.[1] In response to this application, petitions to deny were filed by WHYN Stations Corporation (WHYN), licensee of broadcast Station WHYN-TV, Springfield, Massachusetts and by Springfield Television Broadcasting Corporation (Springfield), licensee of Television Station WWLP, Springfield, Massachusetts.

2. In its petition to deny, WHYN argued that the Spectrum application was incomplete in that it failed to delineate the television signals that were to be relayed. After Spectrum filed an amendment supplying the missing data, WHYN indicated that it would file its opposition in response to the certificate of compliance applications rather than proceed in response to the microwave application. Because the certificate of compliance applications have been granted and there remains no controverted issue, WHYN's petition will be dismissed as moot.

3. In its petition to deny, Springfield initially urged that Spectrum lacked the requisite character qualifications to be a Commission licensee because its Vice President, J. Orrin Marlowe, had abused the Commission's processes in other proceedings before the Commission. This contention appears to stem largely from an informal petition to

[1] The cable television systems will be operated by Spectrum's wholly owned subsidiary, Spectrum Cable Systems, Inc. The Commission has granted certificates of compliance for operation of these systems. *Spectrum Cable Systems, Inc.*, FCC 73-257, —— FCC 2d —— (1973).

109-035—73——7

deny filed by Marlowe in response to WWLP's most recent license renewal application.

4. We have reviewed the pleadings filed by Marlowe in response to the WWLP renewal application and are unable to conclude that any abuse of process is involved. Following previous complaints concerning WWLP's on-the-air treatment of issues concerning cable television, the Commission granted WWLP a short-term renewal conditioned on its filing, with its next renewal application, a statement indicating what steps it proposed to take to avoid further violations of the fairness doctrine. Mr. Marlowe's present petition questions whether WWLP has adequately complied with the terms of this condition. No abuse of process appears to be involved.

5. Springfield later filed a number of supplements to its petition to deny [2] claiming that Spectrum had prematurely commenced construction of the station applied for in violation of Section 319(a) of the Communications Act.[3] Its pleadings and enclosed photographs indicate that Spectrum has constructed two towers, one on East Mountain and one in North Agawam, which it contends are part of the station applied for. Spectrum does not deny that the structures were installed or that, if authorized, the microwave facilities will be installed in the towers. It contends, however, that the structures will be used to house the system's head-end equipment and off-the-air television signal receiving antennas as well as the microwave equipment.[4] Because the structures are necessary for Spectrum's operation regardless of their possible use as microwave facilities, Spectrum argues that no premature construction is involved. Springfield's initial assertion that microwave equipment had actually been installed was withdrawn following an on-site inspection conducted at Spectrum's insistence. Nonetheless, Springfield claims that the structures, if ultimately to be used for microwave purposes, have been prematurely constructed in violation of Section 319 since they existed and were installed prior to Commission issuance of an applicable construction permit.

6. It has been the Commission's policy to grant unconditional construction permits in cases where prospective permittees will use facilities already constructed or in construction if there has been a legitimate alternative purpose in the construction. See *WJIV* v. *FCC*, 231 F. 2d 725, 730 (D.C. Cir. 1956), *Jefferson Radio Co.*, 29 FCC 2d 873 (1960),

[2] Three supplemental pleadings were filed by Springfield, each accompanied by a petition for leave to file. We find good cause for accepting these further pleadings, each of which contain new information, and will accordingly grant the petitions for leave to file the supplements.

[3] Section 319(a) states in pertinent part:
"No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission."

[4] The pleadings and enclosed photographs indicate that the towers here involved are not like the open lattice-work towers customarily used by radio and television stations. They are, rather, cylindrical steel structures 60 feet tall and 10 feet in diameter. According to Spectrum each structure will be air-conditioned and will contain enough space to accomodate both a complete cable television system head-end and, if authorized, a functional microwave transmission installation. This design, it is said, precludes the necessity of constructing both a building and a tower by efficiently packaging everything into a ten foot wide column. It is said to be less susceptible to vandalism, less subject to storm and electrical damage, and less prone to maintenance problems than the traditional type of antenna tower. Spectrum indicates that the tower design is the creation of its President, George R. Townsend, and that a patent of the design has been applied for. The towers here involved appear to be prototype models following the Townsend design specifications.

Cherry & Webb Broadcasting Co., 22 FCC 1082 (1957). The essential facts here appear to be largely uncontested. Spectrum has constructed two towers and proposes to use both as cable system head-ends and as supporting and enclosing structures for the microwave station facilities applied for. Spectrum states, and Springfield has not disputed the fact, that the towers are useable for both purposes, and that they will be used as cable system head-ends and off-the-air receiving points regardless of the Commission's decision on the microwave station application. In these circumstances, and consistent with the Commission's prior and consistent interpretation of Section 319, we are unable to conclude that Spectrum has engaged in premature construction. Springfield's petition to deny will accordingly be denied.

7. It appearing that no further substantial question concerning the subject applications remains, that Spectrum Communications, Inc. is a qualified and eligible applicant, and that the public interest will be served by authorization of the facilities applied for, we will grant the requested construction permit.

Accordingly, IT IS ORDERED, That the "Petition to Deny" filed April 18, 1972 by WHYN Stations Corporation IS DISMISSED as moot.

IT IS FURTHER ORDERED, That the "Petition to Deny" filed April 14, 1972 by Springfield Television Broadcasting Corporation IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Part 78 of the Commission's Rules that the above-captioned application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-313

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
TELEDYNE PACKARD BELL, WEST LOS ANGELES, CALIF.
For Waiver of Comparable Tuning Rules
(47 CFR 15.68)

MARCH 21, 1973.

MR. GEORGE KENT,
Director of Engineering,
Teledyne Packard Bell,
12333 West Olympic Boulevard,
West Los Angeles, Calif. 90064.

DEAR MR. KENT: This concerns a petition for waiver of the comparable tuning rules (47 CFR 15.68) filed by Teledyne Packard Bell on February 15, 1973.

On October 6, 1972, pursuant to an earlier waiver request, Packard Bell was granted a waiver, through February 1973, for two "new model" receivers:

(a) One model had been redesigned to accommodate a 70-position UHF tuner produced by Sarkes Tarzian, Inc. However, tuners being supplied at that time did not meet the ±3 MHz tuning accuracy standard prescribed by the rules. Packard Bell was conditionally authorized to use non-complying 70-position UHF tuners through December 1972. This problem has been resolved.

(b) The second model had been redesigned to accommodate a remotable UHF varactor tuner. However, that tuner was not to be available in production quantities until March 1973. Packard Bell was authorized to combine a continuous UHF tuner with a remoted VHF tuner in this model through February 1973. When the waiver request was made, plans were to produce 15000 units during this period. Production difficulties reduced the number of units actually produced during the period to 2000. Standard Components, the manufacturer of the varactor tuner, has failed to make deliveries and is ceasing production of the tuner which is compatible with the Packard Bell receiver. Packard Bell has responded by dropping the remote control feature for both VHF and UHF and initiating a "crash design" changeover to the 70-position tuner. It now asks for a waiver permitting production of 6000 additional units combining a UHF continuous tuner with a remoted VHF tuner through June 30, 1973, pending changeover to the non-remotable receiver utilizing a 70-position tuner. A waiver is required because this model receiver was first produced after January 1, 1972 and is required by the "new model" requirement to be comparable.

As indicated by the attached table, Packard Bell is at present meeting the percentage of models requirement. Between now and August, it is phasing out non-comparable models and introducing new models which are fully comparable. By May 1, 1973, it is scheduled to exceed the percentage of models requirement, and by August 1, 1973, it expects to achieve 100% compliance.

From the foregoing, it appears that Packard Bell has proceeded and is now proceeding diligently and in good faith to achieve compliance with the comparable tuning rules. Failure in regard to the supply of remotable UHF tuners is beyond its control. Percentage of models compliance, moreover, is proceeding well ahead of requirements. In these circumstances, we consider that a waiver of the comparable tuning rules is clearly justified. Accordingly, the "new model" requirement of § 15.68(a) of the Commission's rules is hereby waived to permit Packard Bell to ship 6000 units of one television receiver model containing a remotable VHF tuner and a non-remotable UHF continuous tuner manufacturered between March 1 and June 30, 1973.

Commissioners Johnson and H. Rex Lee concurring in result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

	Total models	Number required to be comparable*	Actual number comparable
Month:			
		40%	
March 1973	4	1	1
April	4	1	1
May	4	1	2
June	5	2	3
		70%	
July	4	2	3
August and after	3	2	3

*40% or 70% of total receivers reduced to the next lower whole number.

F.C.C. 73-371

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of UNITED TELEVISION CO., INC. (WFAN-TV), WASHINGTON, D.C. For Renewal of License	Docket No. 18559 File No. BRCT-585
UNITED TELEVISION CO., INC. (WFAN-TV), WASHINGTON, D.C. For Construction Permit	Docket No. 18561 File No. BPCT-3917
UNITED BROADCASTING CO., INC. (WOOK), WASHINGTON, D.C. For Renewal of License	Docket No. 18562 File No. BR-1104
WASHINGTON COMMUNITY BROADCASTING CO., WASHINGTON, D.C. For Construction Permit for New Standard Broadcast Station	Docket No. 18563 File No. BP-17416

ORDER

(Adopted April 4, 1973; Released April 9, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (a) a letter filed December 15, 1972, by United Television Co., Inc. (United), requesting authority to continue to suspend operation of television Station WFAN-TV, Channel 14, Washington, D.C.; (b) an opposition thereto filed December 21, 1972, by the Chief, Broadcast Bureau; (c) a reply to the opposition filed January 9, 1973, by United; and (d) a comment on the reply filed January 10, 1973, by Washington Community Broadcasting Co.

2. United requests that, because of substantial financial losses from the operation of Station WFAN-TV, it be authorized to continue to suspend operation of the station pending action by the Commission on an application for assignment of the license of WFAN-TV to B & F Broadcasting, Inc.[1] The Chief, Broadcast Bureau, opposes such relief.

3. After careful consideration of United's request, we are not persuaded that the circumstances here warrant the type of unlimited relief sought. In addition to this proceeding, United is currently involved in three other hearings, each of which includes questions concerning the applicant's character qualifications and each of which has

[1] United states that this application will be filed with the Commission no later than March 26, 1973.

been made dependent upon the favorable resolution of the other proceedings.[2] Since United can not assign its authorizations until the questions concerning its character qualifications have been resolved, see *United Television Company of New Hampshire*, 38 FCC 2d 400 (1972), and since it is unlikely that such a resolution will occur for several years, it is clear that grant of United's request would allow this channel to lie fallow for both an extended and an indefinite period of time contrary to the public's right to have the facility returned to operation at the earliest possible time. Broadcast channels are not a private domain—once authorized a licensee can operate or not as he chooses, but he has no right to control access to a channel which he does not intend to use. In view of the fact that United has no present intention to operate the station, but merely to maintain its possession of the channel until it can sell its license, we are convinced that the public interest will be best served by directing United to resume the operation contemplated when this facility was authorized by no later than 12:01 a.m., July 1, 1973.

4. ACCORDINGLY, IT IS ORDERED, That the request of United Television Co., Inc., made in its letter filed December 15, 1972, IS DENIED and that it IS DIRECTED to resume the operation of television Station WFAN–TV, Washington, D.C., by no later than 12:01 a.m., July 1, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[2] See Docket Nos. 19336–19338; 19412; and 19664.

F.C.C. 73-372

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REVOCATION OF LICENSE OF UNITED TELEVISION COMPANY OF NEW HAMPSHIRE FOR TELEVISION STATION WMUR, MANCHESTER, N.H.	Docket No. 19336
In Re Applications of UNITED TELEVISION COMPANY OF EASTERN MARYLAND, INC., FOR TELEVISION STATION WMET, BALTIMORE, MD.	Docket No. 19337 File No. BRCT-635
For Renewal of License KECC TELEVISION CORP. FOR LICENSE TO COVER CONSTRUCTION PERMIT (BPCT-3079) AS MODIFIED, AUTHORIZING A NEW TELEVISION STATION (KECC-TV) AT EL CENTRO, CALIF.	Docket No. 19338 File No. BLCT-2099

ORDER

(Adopted April 4, 1973; Released April 9, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (a) a letter filed December 15, 1972, by United Television Company of Eastern Maryland, Inc. (United), requesting authority to continue to suspend operation of television Station WMET, Channel 24, Baltimore, Maryland; (b) an opposition thereto filed December 20, 1972, by the Chief Broadcast Bureau; and (c) a reply to the opposition filed January 9, 1973, by United.

2. United requests that, because of substantial financial losses from the operation of station WMET, it be authorized to continue to suspend operation of the station for such period of time as to permit the Commission to complete the hearing in this proceeding "and thereafter to act on an application for assignment of license" of WMET. The Chief, Broadcast Bureau, opposes such relief.

3. After careful consideration of United's request, we are not persuaded that the circumstances here warrant the type of unlimited relief sought. In addition to this proceeding, United is currently involved in three other hearings, each of which includes questions concerning the applicant's character qualifications and each of which has been made dependent upon the favorable resolution of the other proceedings.[1] Since United can not assign its authorizations until the questions concerning its character qualifications have been re-

[1] See Docket Nos. 18559, 18561-18563; 19412; and 19664.

solved, see *United Television Company of New Hampshire*, 38 FCC 2d 400 (1972), and since it is unlikely that such a resolution will occur for several years, it is clear that grant of United's request would allow this channel to lie fallow for both an extended and an indefinite period of time contrary to the public's right to have the facility returned to operation at the earliest possible time. Broadcast channels are not a private domain—once authorized a licensee can operate or not as he chooses, but he has no right to control access to a channel which he does not intend to use. In view of the fact that United has no present intention to operate the station, but merely to maintain its possession of the channel until it can sell its license, we are convinced that the public interest will be best served by directing United to resume the operation contemplated when this facility was authorized by no later than 12:01 a.m., July 1, 1973.

4. ACCORDINGLY, IT IS ORDERED, That the request of United Television Company of Eastern Maryland, Inc., made in its letter filed December 15, 1972, IS DENIED and that it IS DIRECTED to resume the operation of television Station WMET, Baltimore, Maryland, by no later than 12:01 a.m., July 1, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-345

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of UNIVERSAL CABLE VISION, WINTER HAVEN, LAKE ALFRED, AUBURNDALE, AND EAGLE LAKE, FLA., THE UNINCORPORATED "EAGLE LAKE-WEST WINTER HAVEN" AND "AUBURNDALE" CENSUS DIVISIONS OF POLK COUNTY, FLA. For Certificates of Compliance	CAC-342 (FL154), CAC-343 (FL151), CAC-344 (FL148), CAC-345 (FL149), CAC-346 (FL152)

MEMORANDUM OPINION AND ORDER

(Adopted March 29, 1973; Released April 4, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. Universal Cable Vision, a division of TeleVision Communications Corporation, operates cable television systems at Winter Haven, Lake Alfred, Auburndale, and Eagle Lake, Florida, and at the unincorporated Eagle Lake-West Winter Haven and Auburndale census divisions of Polk County, Florida, all of which are located outside of all major and smaller television markets.[1] The systems currently provide their subscribers with the following television broadcast signals:[2]

WFLA-TV (NBC, Channel 8) Tampa, Florida
WTVT (CBS, Channel 13) Tampa, Florida
WEDU (Educ., Channel 3) Tampa, Florida
WUSF-TV (Educ., Channel 16) Tampa, Florida
WTOG (Ind., Channel 44) St. Petersburg, Florida
WLCY-TV (ABC, Channel 10) Largo, Florida
WESH-TV (NBC, Channel 2) Daytona Beach, Florida

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[1] According to the FCC Forms 325 filed by Universal, subscriber distribution is approximately as follows:
Winter Haven, 1628 subscribers of 16,136 population.
Lake Alfred, 114 subscribers of 2847 population.
Auburndale, 363 subscribers of 7000 population.
Eagle Lake, 83 subscribers of 1500 population.
Eagle Lake-West Winter Haven and Auburndale census divisions, 1883 subscribers of 226,222 population for all unincorporated areas of Polk County.

[2] Additionally, on March 13, 1968 Universal was authorized to carry the signal of Station WSUN-TV (Ind., Channel 38), St. Petersburg, Florida. *Manatee Cablevision, Inc.*, 12 FCC 2d 235 (1968). The WSUN-TV signal was carried on the systems until March 9, 1970 when the station left the air. As yet the station has not resumed broadcasting.

WDBO–TV (CBS, Channel 6) Orlando, Florida
WFTV (ABC, Channel 9) Orlando, Florida

2. On May 5, 1972, Universal filed applications for certificates of compliance requesting authorization to carry the following additional television signals:[3]

WMFE–TV (Educ., Channel 24) Orlando, Florida
WSWB–TV (CP, Channel 35) Orlando, Florida
WCIX–TV (Ind., Channel 6) Miami, Florida
WLTV (Span. Lang., Channel 23) Miami, Florida
WPBT (Educ., Channel 2) Miami, Florida
WCKT (NBC, Channel 7) Miami, Florida
WPLG–TV (ABC, Channel 10) Miami, Florida
WTVJ (CBS, Channel 4) Miami, Florida
WBBH–TV (NBC, Channel 20) Ft. Myers, Florida
WINK–TV (CBS, Channel 11) Ft. Myers, Florida
WXLT–TV (ABC, Channel 40) Sarasota, Florida

Hubbard Broadcasting, Inc., licensee of WTOG, has filed an opposition to the certificate applications, and Universal has replied.

3. In addition to the communities listed in paragraph 1, Universal serves 15 of a potential 20 subscribers in the unincorporated Lake Alfred census division of Polk County. Although the small area served is located outside of all television markets, a distant portion of the census division is within the specified zone of television stations licensed to Orlando, and, therefore, pursuant to Section 76.63(a) of the Rules, all of the unincorporated census division is deemed to be within a major television market (Orlando-Daytona Beach, #55). All of the other communities served by Universal are wholly outside of all markets. In its opposition, Hubbard contends that the Commission's major market carriage rules and the access requirements contained in Section 76.251 (c) of the Rules should apply to all communities in which Universal operates since it is an integrated system with a common headend and part of its operations are within a major market.

4. Section 76.5(a) of our Rules specifies that each separate and distinct community, including unincorporated communities within larger unincorporated areas, served by cable television facilities constitutes a separate system even if there is a single headend and identical ownership of facilities extending into several communities. We agree with Universal's position that each unincorporated census division should be treated as a separate system within the meaning of Section 76.5(a). Universal has stated specifically that it does not seek certification for the Lake Alfred census division, but rather, intends to terminate service subscribers located there when certification is obtained for its other

[3] Universal also proposed to carry the signal of Station WLLC–TV (CP, Channel 55) Leesburg, Florida. However, the station's construction permit expired on March 22, 1972, and, subsequently, on May 23, 1972, the construction permit was cancelled and the call letters deleted. Thus, Universal's request for this signal is moot.

systems. Hubbard argues that termination of service is inconsistent with the tenor and purpose of the Commission's rules.

5. We agree that any termination of service in the Lake Alfred census division would be inconsistent with the public interest. In *Diversified Communications Investors, Inc.*, FCC 72–963, 37 FCC 2d 981 (1972), an application for a certificate of compliance was filed for a new cable system in Littlefield, Texas. An area of 0.47 square miles of Littlefield containing 31 persons lay within 35 miles of the reference point of Lubbock, Texas, placing Littlefield within a smaller television market. In that situation we granted a waiver of the rules finding the 31 persons within the 35 mile zone *de minimis*. Because no further construction is contemplated in the Lake Alfred census division, because "trapping" the inconsistent signals from the Lake Alfred census division would not be economically feasible relative to the potential number of subscribers there, and because the area served in the census division is located adjacent to the City of Lake Alfred, we believe a waiver similar to that in *Diversified* is justified. Accordingly, we, *sua sponte*, will waive Section 76.5(a) of the Rules and will consider the 20 potential subscribers in the Lake Alfred census division to be part of the City of Lake Alfred system.

6. Hubbard contends further that: a) the importation of distant signals will fractionalize its audience; b) Universal has not sufficiently specified the unincorporated areas of Polk County to be served nor has it supplied evidence of local authorization; and c) certain unincorporated areas of the county, other than the Lake Alfred census division, are within a major television market (Tampa-St. Petersburg, #28). We must reject Hubbard's fractionalization argument. The proposed signal carriage is consistent with the rules, and Hubbard has submitted no evidence to establish any likelihood of financial injury resulting from Universal's proposal. As to the remaining objections, Universal has specified in its reply that the only unincorporated areas of the county that it will serve are the Eagle Lake-West Winter Haven and Auburndale census divisions, both of which are wholly outside of all markets. A copy of the permit issued to Universal by the Polk County Board of Commissioners to construct a cable television system is on file with the Commission, as are copies of the franchises for the incorporated cities.

7. As a final matter, it should be noted that Universal's cable systems have only twelve channel capacity while a certificate grant will result in a total of twenty one signals authorized for carriage. In view of our decision in *LVO Cable, Inc.* FCC 73–190, —— FCC 2d —— (1973). Universal is on notice that those signals which are required to be carried pursuant to Section 76.57(a) of our rules must be carried on a full-time basis, subject, of course, to the program exclusivity rules.

In view of the foregoing, the Commission finds that a grant of the subject applications would be consistent with the public interest.

ACCORDINGLY, IT IS ORDERED, That the "Objection Pursuant to Section 76.17" filed by Hubbard Broadcasting, Inc., IS DENIED.

IT IS FURTHER ORDERED, That Universal's applications for certificates of compliance (CAC–342, CAC–343, CAC–344, CAC–345, CAC–346) ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-376

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of a Joint Request by VIDEO SERVICE CO., A MISCELLANEOUS MICROWAVE COMMON CARRIER LOGANSPORT TV CABLE CO., LOGANSPORT, IND. (IN029) GREATER LAFAYETTE TV CABLE CO., LAFAYETTE, IND. (IN022) MARION CABLE TV, INC., MARION, IND. (IN032); GAS CITY, IND. (IN030); JONESBORO, IND. (IN031); GRANT COUNTY, IND. TELECABLE OF KOKOMO, INC., KOKOMO, IND. (IN045) HOOSIER TELECABLE, WABASH, IND., (IN004); PERU, IND. (IN003); GRISSOM AFB, IND. (IN070) AND In the Matter of an Informal Request by CABLE TELEVISION COMPANY OF ILLINOIS, GIBSON CITY, ILL. (IL154) For Declaratory Ruling	CSR-315

MEMORANDUM OPINION AND ORDER

(Adopted April 4, 1973; Released April 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON, H. REX LEE, REID AND HOOKS CONCURRING IN THE RESULT.

1. On January 26, 1973, ten of the above-captioned cable television systems and Video Service Company, a miscellaneous microwave common carrier that delivers television signals to these systems, filed a "Joint Request for Declaratory Ruling," asking for a determination that the cable systems may continue carriage of Chicago White Sox baseball games when the broadcast rights for those games shift from Station WFLD-TV (Ind., Channel 32) to Station WSNS-TV (Ind., Channel 44), both Chicago, Illinois. Indiana Broadcasting Corporation, licensee of Stations WISH-TV, Indianapolis, and WANE-TV, Ft. Wayne, Indiana, McGraw-Hill Broadcasting Company, licensee of Television Broadcast Station WRTV, Indianapolis, Indiana, and Video 44, licensee of WSNS-TV, have filed oppositions, and the joint petitioners have replied. Additionally, on January 26, 1973, Cable Television Company of Illinois, operator of a cable system at Gibson City, Illinois, filed an informal request for a ruling that it, also, could continue carriage of the White Sox games.

2. Prior to the effective date of the current cable television rules, these cable systems were lawfully carrying the signal of WFLD–TV, which, for a number of years, has broadcast the White Sox baseball games. None of the systems currently is authorized to carry WSNS–TV, on which the White Sox games will be broadcast in 1973. The cable systems propose to carry WSNS–TV only when that station is broadcasting the White Sox games, and at all other times continue carriage of WFLD–TV.

3. The oppositions contend that the systems should not be permitted to carry the ball games, absent grant of a certificate of compliance authorizing full carriage of WSNS–TV, since any other type of authorization would sanction *ad hoc* "cherry-picking" of programming. WSNS–TV further objects to carriage of the games without carriage of the balance of its programming. In their reply, petitioners argue that they are not seeking to add a new signal to existing operations, but rather to continue carriage of an event that has been available to their subscribers for many years, and, thus, certification is not required. The petitioners indicate that they are exploring the possibility of seeking certification for full carriage of WSNS–TV, but that the time required for preparation, and Commission consideration, of such applications would foreclose the possibility of commencing carriage of the games prior to the start of the 1973 season on April 6. Video Service states that its total microwave capacity is now being used to deliver signals to these and other systems and, therefore, the only way to provide its customers with the 1973 White Sox games is by the proposed station substitution.

4. The petitioners appear to maintain that carriage of the White Sox baseball programming is grandfathered. We do not agree. Section 76.65 of the Commission's Rules grandfathers the carriage of television signals that cable systems were authorized to carry or were lawfully carrying prior to March 31, 1972. It does not grandfather individual programming that has been carried on an authorized signal. While in *Dubuque TV–FM Cable Co.*, 18 FCC 2d 25 (1969), on which petitioners rely, we authorized carriage of WFLD–TV to make available to the system's subscribers the full schedule of White Sox games which were previously carried by WGN–TV, it was not the carriage of the White Sox games that was requested and authorized, it was the carriage of the WFLD–TV signal in full. Likewise, in *Dubuque TV–FM Cable Co.*, FCC 73–357, —— FCC 2d ——, released April 4, 1973, we waived the smaller market signal carriage rules and granted a certificate of compliance authorizing carriage of WSNS–TV, stating that the continued availability of the White Sox games was an important factor in our determination that good cause existed. This action indicates the Commission's determination that a certificate of compliance is required to resolve this peculiar carriage problem. While that is the guiding principle here, and we expect all systems in the future to take appropriate steps in orderly fashion to protect the interests of their subscribers (see, e.g., *Dubuque TV–FM Cable Co.*, *supra*), we do not believe that in this novel and unusual situation we should act in a way that disrupts an established viewing pattern and

penalizes the subscribing public. We therefore shall grant special relief to the petitioners, in the form of a special temporary authorization to substitute carriage of WSNS–TV for WFLD–TV when WSNS–TV is broadcasting Chicago White Sox baseball games. This authorization is expressly conditioned on the prompt filing of applications for full carriage of WSNS–TV, in no event later than 60 days from the release of this order. This approach should afford the petitioners ample time to file and have processed the necessary applications, and to complete any necessary construction, before the 1974 baseball season. In any event, this temporary authorization is limited to the duration of the 1973 baseball season, and we will not grant similar temporary relief for any future season.

In view of the foregoing, the Commission finds that a grant of the requested declaratory ruling to the extent indicated above would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Joint Request for Declaratory Ruling" and the informal request for declaratory ruling ARE GRANTED to the extent indicated in Paragraph 4, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*